

**OPINION**

**Date of adoption: 11 September 2015**

**Cases Nos 224/09, 225/09, 343/09 and 344/09**

**Vekoslav RISTIĆ and Stanoje RISTIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 11 September 2015,

with the following members taking part:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, makes the following findings and recommendations:

1. PROCEEDINGS BEFORE THE PANEL
2. The complaints of Mr Vekoslav Ristić (cases nos. 224/09 and 225/09) were introduced on 8 April 2009 and registered on 30 April 2009.
3. On 18 August 2010 and 26 January 2011, the Panel requested the complainant to provide additional information. On 31 August 2015, the Panel received a response from the complainant.
4. On 9 September 2010, the Panel decided to join cases 224/09 and 225/09 pursuant to Rule 20 of the Panel’s Rules of Procedure.
5. On 29 March 2012, the Panel communicated the complaints to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1) for UNMIK’s comments on their admissibility. On 7 May 2012, the SRSG provided UNMIK’s response.
6. On 23 August 2012, the Panel declared the complaints in cases 224/09 and 225/09 admissible.
7. 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.
8. The complaints of Mr Stanoje Ristic (cases nos. 343/09 and 344/09) were introduced on an undetermined date and registered on 4 December 2009.
9. On 6 October 2010, the Panel requested additional information from the complainant. On 2 November 2010, the complainant provided his response.
10. On the same date, the Panel decided to join cases 343/09 and 344/09 pursuant to Rule 20 of the Panel’s Rule of Procedure.
11. On 22 June 2011, the Panel communicated the cases to the SRSG for UNMIK’s comments on the admissibility of the cases. On 5 September 2011, the SRSG submitted UNMIK’s response.
12. On 17 August 2012, the Panel declared the complaints admissible.
13. 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.
14. On 26 September 2012, the Panel decided to join cases nos. 224/09, 225/09, 343/09 and 344/09 pursuant to Rule 20 of the Panel’s Rules of Procedure.
15. On 30 April 2015, the SRSG provided UNMIK’s comments on the merits of the complaints of Mr Stanoje Ristić, case nos. 343/09 and 344/09, together with copies of the investigative files.
16. On 21 July 2015, the SRSG provided UNMIK’s comments on the merits of the complaints of Mr Vekoslav Ristić, case nos. 224/09 and 225/09, together with copies of the investigative files with respect to the complaints.
17. On 4 August 2015, and again on 17 August 2015, the Panel requested UNMIK to confirm if the disclosure of files concerning the cases could be considered final. On 26 August 2015, UNMIK provided its response.
18. THE FACTS
19. **General background[[2]](#footnote-2)**
20. 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).
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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”.
29. 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.
30. 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.
31. 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.
32. **Circumstances surrounding the disappearance and killing of Mrs Milevka Ristić[[3]](#footnote-3) (case no. 224/09), Mr Mirko Ristić (case no. 225/09), Mrs Jovanka Ristić (case no. 343/09) and Mr Anđelko Ristić (case no. 344/09).**
33. The first complainant **(**cases nos. 224/09 and 225/09) is the son of Mr Mirko Ristić and Mrs Milevka Ristić. The second complainant (cases nos. 343/09 and 344/09) is the son of Mrs Jovanka Ristić and Mr Anđelko Ristić.

*Disappearance and killing of Mrs Milevka Ristić and Mr Mirko Ristić (case nos. 224/09 and 225/09)*

1. The first complainant states that Mrs Milevka Ristić and Mr Mirko Ristić were abducted in June 1999 from their home in the village of Dvoran/Dvorane, municipality of Suharekë/Suva Reka. He states that he was informed that they were “taken prisoner and sent to Zelengora factory” in Mushtisht /Mušutiste village, where an improvised camp was located. They were never seen alive again.
2. The complainant states that he contacted the ICRC in Belgrade regarding his parents’ abduction, on 9 November 1999. The victims’ names appear in the database compiled by the UNMIK OMPF[[4]](#footnote-4) and also in lists of missing persons, communicated by the ICRC to UNMIK, on 12 October 2001, 29 January 2002 and 11 February 2002.[[5]](#footnote-5)
3. The entries in relation to Mr Mirko Ristić and Mrs Milevka Ristić in the online database maintained by the ICMP[[6]](#footnote-6) read in relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this missing person on 01-27-2006” and “09-13-2004 to authorized institution. [respectively] To obtain additional information, contact EULEX Kosovo Headquarters”.
4. On 7 April 2006, the mortal remains of both Mrs Milevka Ristić and Mr Mirko Ristić were handed over to the Ristić family by UNMIK Police.

*Disappearance and killing of Mrs Jovanka Ristić and Mr Anđelko Ristić (case nos. 343/09 and 344/09)*

1. The second complainant states that Mrs Jovanka Ristić and Mr Anđelko Ristić were abducted from their home in the village of Dvoran/Dvorane, in the municipality of Suhareke/Suva Reka, in June 1999. They were never seen alive again.
2. The complainant states that the abduction was reported to the UNMIK Police as well as to the ICRC and the Serbian Red Cross. The names of Mrs Jovanka Ristić and Mr Anđelko Ristić appear in the database compiled by the UNMIK OMPF as well as in lists of missing persons communicated by the ICRC to UNMIK on 12 October 2001, 29 January 2002 and 11 February 2002.
3. The entries in relation to both Mr Mirko Ristić and Mrs Jovanka Ristić in the online database maintained by the ICMP read in relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this missing person on 11-10-2004 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters”.
4. The mortal remains of Mrs Jovanka Ristić and Mr Anđelko Ristić were returned to the second complainant, Mr Stanoje Ristić, on 25 March 2005.

*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 § 16 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 File*

1. The first documents in the file are four undated ICRC Victim Identification Forms in the Serbian language for Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić:

* The form in relation to Mrs Milevka Ristić, apparently completed by the ICRC, affixed with case no. BLG-802750, provides her brief physical description, lists her husband as a person who disappeared with her from their family home and provides the name and contact details of her sister and of her son, the complainant in her case, Mr Vekoslav Ristić, as her next of kin. The form is cross-referenced to the MPU case no. 2002-000539. The form lists her date of disappearance as 11 June 1999.
* The form in relation to Mr Mirko Ristić, apparently completed by the ICRC, affixed with case no. BLG-802750, provides his brief physical description, lists his wife as a person who disappeared with him from their family home and provides the names and contact details of his brother and of his son, the complainant in his case, Mr Vekoslav Ristić, as his next of kin. The form lists his date of disappearance as 11 June 1999. A copy of his medical booklet is included with the form.
* The form in relation to Mrs Jovanka Ristić, apparently completed by the ICRC, affixed with case no. BLG-802865, provides her brief physical description, lists her husband, Mr Anđelko Ristić, Mr Mirko Ristić and Mrs Milevka Ristić as persons who disappeared with her and provides the name and contact details of her brother and of her son, the complainant in her case, Mr Stanoje Ristić, as her next of kin. The form is cross-referenced to the MPU case no. 2000-001374 and contains a photograph of her. The form lists her date of disappearance as June 1999.
* The form in relation to Mr Anđelko Ristić, apparently completed by the ICRC, with case no. BLG-802865, provides his brief physical description, lists his wife, Mrs Jovanka Ristić, Mrs Milevka Ristić and Mr Mirko Ristić as persons who disappeared with him and provides the name and contact details of his sister and of his son, the complainant in his case, Mr Stanoje Ristić, as his next of kin. The form is cross-referenced to the MPU case no. 2000-001374 and contains a photograph of him. The form lists his date of disappearance as June 1999.

1. The next documents in the file are English language versions of Victim Identification Forms for Mrs Milevka Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić. There is no English language version for Mr Mirko Ristić. The forms contain the same information as the Serbian language versions, with the exception that the date of disappearance is listed as 11 August 1999 for Milevka Ristić.[[7]](#footnote-7)
2. The file also contains MPU Case Continuation Reports for Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić[[8]](#footnote-8):

* The Report in relation to Mr Mirko Ristić, affixed with MPU case no. 2002-000542, has two entries, each dated 14 June 2002, stating “Input DB – OK” and “Input DVI – OK”
* The Report in relation to Mrs Jovanka Ristić, affixed with MPU case no. 2000-001374, has four entries. The first entry, dated 18 October 2000, states “Input OK”, the second entry dated 01 February 2002, states “Input DVI – OK (for Andjelko)”, the third and fourth entries, both dated 17 June 2002 state “Additional input DB – OK” and “Input DVI – OK”, respectively.
* There are two Reports in relation to Mr Anđelko Ristić. The first is affixed with MPU case no. 2000-001374 and contains two entries, each dated 17 June 2002, stating “Additional Input DB – OK” and Additional Input DVI – OK” respectively. The second Case Continuation Report is undated and states “Complainant attended to make missing person report” and includes the name and contact details of the complainant, Mr Stanoje Ristić. The Report provides the name, basic biographical information and details of the disappearance of Mr Anđelko Ristić.

1. The file contains two documents titled “MPUREPORT”, both dated 26 November 2004, in relation to Mr Mirko Ristić and Mrs Jovanka Ristić respectively. The documents provide basic biographical information on both persons. The field titled “modus” is blank for Mr Mirko Ristić and for Mrs Ristić it states “[Missing person] left village. No further information available.”
2. The files contain several documents which relate to the location and identification of the mortal remains of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić. It appears that the mortal remains were initially found and buried in a cemetery in a location listed as “Siroko” in Suharekë/Suva Reka. Subsequently, all of the mortal remains were apparently re-exhumed from the same location in December 2003, which was coded YMG: The documents in relation to the victims in the case which are in the file are:

* The documentation in relation to Mrs Milevka Ristić is dated 13 December 2003 includes an Autopsy Report for remains no. YMG68-1B. The autopsy report states that the cause of death was “Gunshot injuries to the neck and chest.” There is a DNA report from the ICMP, dated 30 August 2004, confirming the remains as being those of Mrs Milevka Ristić. There is also an UNMIK Confirmation of Identity form, dated 5 October 2004, for MPU file no. 2002-000539, confirming the remains as those of Mrs Milevka Ristić. There is an UNMIK Death Certificate, dated 5 October 2004, stating that the death of Mrs Milevka Ristić occurred prior to 26 August 1999. Finally, there is an undated document titled “Family Visit” stating that the remains of Mrs Milekva Ristić were handed over to her son, the complainant Mr Vekoslav Ristić, on 7 April 2006.
* The documentation in relation to Mr Mirko Ristić, dated 13 December 2003, includes an Autopsy Report for remains no. YMG37-001BP. The autopsy report states that the cause of death was “Unascertained.” There is a DNA report from the ICMP, dated 13 January 2006, confirming the remains as being those of Mr Mirko Ristić. There is also an UNMIK Confirmation of Identity form, dated 6 February 2006, for MPU file no. 2002-000542, confirming the remains as those of Mr Mirko Ristić. There is an UNMIK Death Certificate, dated 6 February 2006, stating that the death of Mr Mirko Ristić occurred prior to 26 August 1999. Finally, there is a document titled “Family Visit” and mortal remains handover document, dated 7 April 2006, stating that the remains of Mr Mirko Ristić were handed over to his son, the complainant Mr Vekoslav Ristić, on the same day.
* The documentation in relation to Mrs Jovanka Ristić, dated 13 December 2003, includes an Autopsy Report for remains no. YMG58-001B. The autopsy report states that the cause of death was “Unascertained.” There is a DNA report from the ICMP, dated “11/03/2004”, confirming the remains as being those of Mrs Jovanka Ristić. There is an UNMIK Confirmation of Identity form, dated 25 November 2004, for MPU file no. 2000-011374, included in the file for Mrs Jovanka Ristić confirming the remains as hers. There is an UNMIK Death Certificate, dated 25 November 2004, stating that the death of Mrs Jovanka Ristić occurred prior to October 1999. Finally, there is an UNMIK document titled “Family Visit” and a mortal remains handover document, dated 25 March 2005, stating that the remains of Mrs Jovanka Ristić were handed over to her son, the complainant Mr Stanoje Ristić, on the same day.
* The documentation in relation to Mr Anđelko Ristić, dated 12 December 2003, includes an Autopsy Report for remains no. YMG41-001B. The autopsy report states that the cause of death was “Gunshot wound to the head.” There is a DNA report from the ICMP, dated “11/03/2004”, confirming the remains as being those of Mr Anđelko Ristić. There is an UNMIK Confirmation of Identity form, dated 25 November 2004, for MPU file no. 2000-0001374, included in the file confirming the remains as belonging to Mr Anđelko Ristić. There is an UNMIK Death Certificate, dated 25 November 2004, stating that the death of Mr Anđelko Ristić occurred prior to October 1999. Finally, there is a document titled “Family Visit” and mortal remains handover document, dated 25 March 2005, stating that the remains of Mr Anđelko Ristić were handed over to his son, complainant Mr Stanoje Ristić, on the same day.

*WCIU Files for Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić*

1. The file also contains three WCIU documents titled “Anti Mortem Investigation Report” for Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić respectively:

* The Report in relation to Mr Mirko Ristić is cross**-**referenced with MPU case**-**file no. 2002-000542 and dated 24 December 2004. The Report states that “On 11 June 1999 the Missing Person (MP), Ristic Mirko left his village along with Ristic Andjelko, Ristic Jovanka and Ristic Mileva and never come back. This case has been reported to the [ICRC] and was registered by ICRC under nr. ICRC/BGL-802750-02...” In the field “Further Investigation”, the report reads: “Investigation was aimed as to find out how the victim disappeared, what was the possible cause of his disappearance, who was engaged in this incident etc. The only information available is that MP left the village Dvorane under Suva Reka municipality on 11 June 1999 and never come back to his house. The undersigned tried to contact with the Next-to-kin of the missing person but it was not possible as the persons were not available even over the telephone. No witness available for this case at this moment. **This case requires more investigation**”. In its conclusion the report reads “After investigations, it’s impossible at this time to find an impartial witness. No information leading to a possible MP’s location. This case should remain open **pending** within the WCU” (Emphasis in original version).
* The Report in relation to Mrs Jovanka Ristić is cross**-**referenced with MPU case**-**file no. 2000-001374 and dated 24 December 2004. The Report provides the same investigative details as those contained in the report described above for Mr Mirko Ristić, using the same wording.
* The file for Mr Anđelko Ristić contains the same WCIU Ante Mortem Investigative Report as that of Mrs Jovanka Ristić.

1. There are two documents titled “Investigation details” relating to Mr Mirko Ristić individually and Mrs Jovanka Ristić and Mr Anđelko Ristić combined, both dated 25 December 2004, containing the names of all three persons and cross referenced with their respective ICRC case numbers. The field for investigator notes reads “See inv report.” There is a later version of the same document, dated 25 March 2005, containing the same details with some additional wording in the investigator notes stating “[Missing person] 2000-001374 (Andjelko RISTIC) was positively identified and handed over to the family…No further information about the other [Missing Persons] from this case.”

*WCIU Files related to Mrs Jovanka Ristić and Mr Anđelko Ristić only*

1. The WCIU file for Mrs Jovanka Ristić and Mr Anđelko Ristić contains a number of documents that are not included in the file for Mrs Milevka Ristić and Mr Mirko Ristić. This includes a memorandum, dated 6 December 2001, of communication within the WCIU related to a separate case involving a murder in the same municipality. The memorandum mentions that a local Serbian priest provided a list of names of other persons from the area who were still missing and attaches the list in Serbian titled “List of Serbs that stayed in the Region of Suva Reka Municipality (after the date 13.06.1999)”. There is an English version of the list containing 22 names, including those of all four missing persons in this case, along with hand-written corresponding MPU numbers entered next to the names. There is a follow up memo, dated 30 September 2003, stating that a search of the MPU database was done on the same list of names, which was found to contain 13 matches out of the 22 names. The names of Mrs Jovanka Ristić and Mr Anđelko Ristić do not have MPU case numbers next to them.
2. Also in the file are several memoranda with information on persons who went missing in the Kosovo conflict, as transmitted from the ICRC to the UNMIK MPU. Among them, there is a memorandum dated 22 December 2001, in which the ICRC forwarded to the UNMIK MPU a list, including the names of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić. Attached to another memorandum, dated 29 January 2002, is an updated list of missing persons, which also includes the names of all four missing persons in this case.
3. The file contains a memo, dated 15 March 2004, from UNMIK CCIU to the UNMIK Directorate for Administrative Affairs titled “Release of data from the Directorate of Administrative Affairs/Central Civil Registry for criminal investigations of UNMIK Police.” The memo provides a list of 11 names, including those of Mrs Jovanka Ristić and Mr Anđelko Ristić and states “All used to live in Musutiste village, Suva Reka…Please respectfully request the release of Address, Fingerprints and Picture of the mentioned Person, Persons.” There is a handwritten note at the bottom of the document which states “Annotation: No answer as of 01.04.2004”.
4. The file also contains a copy of a publication by the Humanitarian Law Center titled “Abduction and disappearance of Non-Albanians in Kosovo.” The names and dates of birth of all four missing persons are included in the report and are listed together along with the following text; “Serbs, from Dvorane (Dvoran), Suva Reka Municipality – disappeared on 11 June 1999.”
5. The file further contains a WCIU Case Analysis Report, dated 15 September 2008, on case no. 2000-001374 concerning Mrs Jovanka Ristić and Mr Anđelko Ristić. In the fields “Total Number of Missing Persons”, the Report reads “2”. Under the field “Comments of Reviewing Officer” the report states: “On 11/06/1999 the [Missing Persons] left the village Dvorane under Suva Reka municipality. The OMPF database states that the remains have been identified and returned on 25/03/2005. Case closed. This case being a war crime case, WCU Investigations may be proceed further”.
6. THE COMPLAINTS
7. The complainants complain about UNMIK’s alleged failure to properly investigate the disappearance and killing of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić. In this regard the Panel deems that the complainants invoke a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
8. 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 § 55 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 disappearance and killing of 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. The SRSG generally accepts that the disappearance of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić occurred in life threatening circumstances.[[9]](#footnote-9) 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 Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić 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 respect 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, 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 Mrs Milevka Ristić and Mr Mirko Ristić, and “[d]espites [*sic*] the importance of the missing files[[10]](#footnote-10) it appears that UNMIK Police did open and pursue an investigation into the possibility of establishing the whereabouts of Mrs. and Mr. Ristić and of identifying the perpetrators and bring them to justice.” The SRSG also states that the UNMIK MPU “opened two files, respectively for Mrs. Milevka Ristić and Mr. Mirko Ristić, in 2002.”
4. With respect to Mrs Jovanka Ristić and Mr Anđelko Ristić, the SRSG also states that it appears that “UNMIK Police did open and pursue an investigation into the possibility of establishing the whereabouts of Ms. and Mr. Ristić and of identifying the perpetrators of the disappearance and death and bring them to justice.” The SRSG further states that the UNMIK MPU files for Mrs Jovanka Risitć and Mr Anđelko Ristić were opened in 2000.
5. The SRSG also describes the steps taken by UNMIK in identifying the mortal remains of all four persons, including the DNA analysis, the conclusions of the autopsy reports mentioned earlier (see § 44 above) and the return of the mortal remains to their families.
6. Concerning the investigation aimed at identifying and bringing the perpetrators to justice, with respect to Mrs Jovanka Ristić and Mr Mirko Ristić, the SRSG states that investigators “seem to have established that on 11 June 1999 Mr. Ristić left his village together with other residents, including his wife Milevka Ristić and never came back. [see § 45 above] This document also states that the case was reported to the ICRC, but nothing is said as to a possible abduction and its alleged authors.” The SRSG adds that the Report indicates that there were no witnesses available for this case and that a WCIU attempt to contact Mr Mirko Ristić’s next-of-kin was to no avail “as the persons were not available over the telephone.”
7. The SRSG argues that “[w]ithout an access to all the files related to those two cases, it is difficult to establish the subsequent steps of the investigation. However, the uncertainty regarding, on the one hand, the date of the disappearance of Mrs. Ristić (11 June 1999 according to the Complainant and some of the information in Mr. Ristić’s file but 11 August 1999 according to Mrs. Ristić’s MPU file) and, on the other hand Mr. Ristić’s cause of death rendered this investigation extremely complex. In addition, the lack of witness to assist the investigators in their tasks prevented the timely completion of the investigation.”
8. With regard to the cases of Mrs Jovanka Ristić and Mr Anđelko Ristić, the SRSG refers to the UNMIK WCIU Anti-Mortem Report of 9 December 2004, which states that the case was reported to the ICRC “but nothing is said as to a possible abduction and its alleged authors. The SRSG points to a lack of witnesses in this case and that an investigator attempted to contact Mrs Ristić’s next-of-kin but this was “to no avail as the person was not available over the telephone.” Finally the SRSG states that “[t]he lack of witnesses to assist the investigators in their tasks and the uncertainty regarding Ms. Ristić’s cause of death rendered this investigation extremely complex and prevented its timely completion.”
9. With respect to the cases of Mrs Milevka Ristić and Mr Mirko Ristić, the SRSG concludes that “it appears that UNMIK investigative actions, as required by Article 2 ECHR, were limited by the lack of leads.”
10. With respect to the cases of Mrs Jovanka Ristić and Mr Anđelko Ristić, the SRSG concludes that “it appears that there has not been a violation by UNMIK of Article 2 ECHR in respect to the Complaints of Mr. Ristić and the Complaints should be rejected in their entirety.”

### 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 disappearance and killing of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić.

#### Submission of relevant files

1. At the Panel’s request, on 20 April 2015 and 21 July 2015, the SRSG provided copies of the documents related to this investigation, which UNMIK was able to recover. On 26 August 2015, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 16 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. First, the Panel considers that the limited content of the investigative files, in the cases of Mrs Milevka Ristić and Mr Mirko Ristić, in particular in light of the SRSG’s acknowledgement that there were important files missing from those cases (see §§ 71 and 75 above), raises issues of the burden of proof. In this regard, the Panel refers to the approach of the European Court on Human Rights as well as of the United Nations Human Rights Committee (HRC) on the matter. The general rule is that it is for the party who asserts a proposition of fact to prove it, but that this is not a rigid rule.
2. Following this general rule, at the admissibility stage an applicant must present facts, which are supportive of the allegations of the State’s responsibility, that is, to establish a *prima facie* case against the authorities (see, *mutatis mutandis*, ECtHR, *Artico v. Italy*, no. 6694/74, judgment of 13 May 1980, §§ 29-30, Series A no. 37; ECtHR, *Toğcu v. Turkey*, no. 27601/95, judgment of 31 May 2005, § 95). However, the European Court further holds that “... where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities … The burden of proof may then be regarded as resting on the authorities to provide a satisfactory and convincing explanation” (see ECtHR [GC], *Varnava and Others v Turkey*,cited above in § 57, at §§ 183-184).
3. The European Court also states that “... it is for the Government either to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred, failing which an issue under Article 2 and/or Article 3 of the Convention will arise” (see ECtHR, *Akkum and Others v. Turkey*, no. 21894/93, judgment of 24 June 2005, § 211, ECHR 2005-II (extracts)). The Court adds that “… [i]f they [the authorities] then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn” (see ECtHR, *Varnava and Others v Turkey* [GC],cited above in § 57, at § 184; see also, HRC, *Benaniza v Algeria,* Views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; HRC, *Bashasha v. Libyan Arab Jamahiriya*, Views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008).
4. The Panel understands that the international jurisprudence has developed in a context where the Government in question may be involved in the substantive allegations, which is not the case with UNMIK. The Panel nevertheless considers that since the documentation was under the exclusive control of UNMIK authorities, at least until the handover to EULEX, the principle that “strong inferences” may be drawn from lack of documentation is applicable.
5. Second, the Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights (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.
6. 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).
7. 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 § 58 above, at § 136); ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, §317).
8. 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).
9. 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 § 58 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).
10. 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 § 90 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 § 91 above, at §322).
11. 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 § 91 above**,** at §317).
12. Specifically with regard to persons disappeared and later found dead, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that “the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 93 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 58 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).
13. 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 § 92 above, at §§ 311 - 314; ECtHR, *Isayeva v. Russia*, cited in § 92 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 § 91 above, at §324).
14. 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* § 94 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 Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić disappeared shortly after the deployment of UNMIK in Kosovo, when crime, violence and insecurity were rife.
2. On 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 § 93 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 § 97 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 § 92 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 92 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 § 90 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 § 25 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 § 93 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 § 96 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 opened the file related to Mrs Milevka Ristić’s and Mr Mirko Ristić’s disappearance in 2002. He also states that MPU files were opened related to Mrs Jovanka Ristić and Mr Anđelko Ristić in 2000. The Panel, having considered all the investigative documents, considers that UNMIK was made aware of the disappearance of all persons by the latest in October 2001, when the ICRC forwarded their ante-mortem information to UNMIK (see § 31 above).
2. In this regard, the Panel first addresses the issue of the burden of proof. At the admissibility stage, the Panel was satisfied that the complainants’ allegations were not groundless, thus it accepted the existence of a *prima facie* case: that all victims disappeared in life threatening circumstances and that UNMIK had become aware of their disappearance in 2000, with respect to Mrs Jovanka Ristić and Mr Anđelko Ristić, and October 2001, with respect to Mrs Milevka Ristić and Mr Mirko Ristić (see §31 above).
3. Accordingly, applying the principles discussed above (see §§ 85-88), the Panel considers that the burden of proof has shifted to the respondent, so that it is for UNMIK to present the Panel with evidence of an adequate investigation as a defence against the allegations put forward by the complainant and accepted by the Panel as admissible. UNMIK has not discharged its obligation in this regard, as it has neither presented a complete investigative file, nor has it in a “satisfactory and convincing” way explained its failure to do so. Accordingly, the Panel will draw inferences from this situation.
4. The Panel infers from the limited content of the investigative file that one of the following situations occurred: no investigation was carried out; UNMIK deliberately opted not to present the file to the Panel, despite its obligation to cooperate with the Panel and to provide it with the necessary assistance, including the release of documents relevant to the complaints under Section 15 of UNMIK Regulation No. 2006/12 (cited in § 81 above); the file was not properly handed over to EULEX; or UNMIK failed to retrieve the file from the current custodian.
5. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the investigative file for the Panel’s review. The Panel also notes that the SRSG in essence opines that, from the dearth of investigative information available regarding the investigation into the disappearance of Mrs Milevka Ristić, it is not possible to establish whether some apparent gaps in the investigation are attributable to a failure of the relevant offices to pass on and record the information, or rather to a mere lack of investigation. For this reason, he is not in a position to provide comments as to whether UNMIK conducted an effective investigation in this case.
6. However, the Panel considers that whichever of these potential explanations is applicable, it indicates a failure, which is directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.
7. The purpose of this investigation was to discover the truth about the circumstances of all victims’ disappearance, establish her 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).
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 § 58 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 § 63 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 § 27 above).
10. With regard to the first part of the procedural obligation, that is, discovering the whereabouts or determining the fate of the missing persons, the Panel notes that the file does not indicate how, where and by which institution the mortal remains of any of these persons were found. UNMIK confirmed the identification of the mortal remains of all these persons through DNA analysis conducted by the ICMP (see § 43 above) and handed them over to their respective families on 7 April 2006, for Mrs Milevka and Mr Mirko Ristić, and 23 March 2005, for Mrs Jovanka and Mr Anđelko Ristić.
11. The Panel has already stated on a number of occasions that location and identification of the mortal remains of a missing person is in itself an important achievement. The Panel also notes that the procedural obligation under Article 2 did not come to an end with the discovery of the mortal remains of these persons, especially given that the mortal remains of two of them showed signs of violent deaths (see e.g. HRAP, *Grujić*, no. 287/09, opinion of 19 March 2015, § 96).
12. Now the Panel will turn to the investigation carried out by UNMIK Police with the aim of identifying the perpetrator(s) and bringing them to justice, that is, the second element of the procedural obligation under Article 2 of the ECHR.
13. The Panel notes that by the end of 2000, UNMIK Police already possessed some relevant information on the disappearance of Mrs Jovanka Ristić and Mr Anđelko Ristić and in late 2001 for Mrs Milevka Ristić and Mr Mirko Ristić.
14. It must be noted at the outset that there is nothing in the file indicating any investigative action was taken with respect to identifying the perpetrators in the disappearance and killing of Mrs Milevka Ristic. This is particularly concerning, given that the autopsy report for Mrs Milevka Ristić states the cause of death as being a gunshot wound to the head. With respect to the other missing persons, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić, the investigative file shows that no basic investigative steps were taken such as, “canvassing” the area of the alleged crime scene to look for additional potential witnesses, visiting the homes of the missing persons, meeting with local village heads to seek more information, attempting to link their cases to other cases regarding the disappearances and/or killings of other persons in the area at the same time, or even identifying the date and place where the bodies were originally discovered.
15. There was some action taken with respect to learning more about the fates of the Mrs Jovanka Ristić and Mr Anđelko Ristić, with enquiries sent to UNMIK Civil Affairs and cross referencing names of other missing persons in the area given by a local Serbian priest in 2001 (see §§ 47 & 49 above). However, it appears that no follow-up on this information from the priest or on the communication with UNMIK Civil Affairs was conducted at all.
16. 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 (see § 40 above). However, there is no indication in the investigative file that UNMIK attempted to contact them other than on one occasion, approximately 5 years after their disappearance, by telephone, without reaching any of them. No details of whom specifically the investigators attempted to contact are in the file. Despite the investigator’s report stating that the cases require more investigation, all three files were classified as “pending” (see § 45 above). Nothing in the file indicates an attempt to contact the families through any of the other existing channels.
17. The Panel takes note that it appears that all bodies were exhumed by UNMIK in December 2003. However, the Panel notes with concern that there is no documentation in the file about the circumstances of the discovery of the gravesite, which would have assisted in the investigation.
18. 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 § 85 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
19. 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.
20. The file shows that the mortal remains of all persons were returned to their respective families in 2005 with respect to Mrs Jovanka Ristić and Mr Anđelko Ristić (see § 37 above) and 2006 with respect to Mrs Milevka Ristić and Mr Mirko Ristić (see § 33 above). The Panel notes that this was a moment of renewed contact with the family. Nonetheless, no new statements were taken or further investigative action was carried out to identify the perpetrators.
21. In September 2008, the WCIU reviewed the case of Mrs Jovanka Ristić and Mr Anđelko Ristić. However, the Panel notes that the information in this Report only re-states the same basic information that had been known to UNMIK Police since the registration of the case. The Panel notes that the review states that the bodies of both persons had been identified, the mortal remains returned to the family and that the case was closed. 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. No other action was recommended. With regard to Mrs Milevka Ristić or Mr Mirko Ristić, the Panel also notes that there is no evidence in the file that any WCIU review was undertaken.
22. The Panel recalls the SRSG’s argument that the lack of progress in this case could be attributed to the absence of witnesses or leads (see § 75 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.
23. Further, as the Panel has previously observed, UNMIK Police and DOJ had implemented a policy conserving its limited investigative resources and concentrating only on the investigations “with a strong likelihood of suspect identification” (see HRAP, *Stevanović*, no. 289/09 opinion of 14 December 2014, at § 112). As the Panel also noted, this approach was in contrast to the description of the situation on the ground presented by the UN Secretary-General to the UN Security Council at around the same time and indicated a serious systemic failure (see *ibid*., § 116).
24. Likewise, the file indicates no active involvement of a public prosecutor in this investigation. 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.
25. 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 conduct investigations into disappearances of people. 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 § 68 above).
26. 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 § 93 above), as required by Article 2 of the ECHR.
27. Finally, in relation to the procedural requirement of public scrutiny, the Panel recalls that Article 2 also entails that the victim’s 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 complainant or any other family member. There is only one failed attempt at such contact noted in the file for the entire investigative period, in December 2004 (see § 45 above). 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 any 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).
28. The Panel, in light of the shortcomings and deficiencies in the investigation described above, considers that the cases of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo (see § 108 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 105 above, at § 11.4; see also HRAP, *Bulatović*, cited in § 82 above, at §§ 85 and 101).
29. Therefore, considering all stated above, the Panel concludes that UNMIK failed to carry out an effective investigation into the disappearance and killing of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
30. CONCLUDING COMMENTS AND RECOMMENDATIONS
31. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
32. 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 disappearance and killing of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić, 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.
33. 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.
34. 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 § 27 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.
35. 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], *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC]), *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the disappearance and killing of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić 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 disappearance and killing of Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić, 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. **RECOMMENDS THAT UNMIK:**
3. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE DISAPPEARANCE AND KILLING OF Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
4. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH MEDIA, RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE DISAPPEARANCE AND KILLING OF Mrs Milevka Ristić, Mr Mirko Ristić, Mrs Jovanka Ristić and Mr Anđelko Ristić, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS AND THEIR FAMILIES;**
5. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANTS FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 OF THE ECHR;**
6. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
7. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
8. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov Marek Nowicki

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 file has frequent references to both “Milevka” and “Mileva”, who is the same person. [↑](#footnote-ref-3)
4. The OMPF database is not open to public. The Panel accessed it with regard to this case on 3 September 2015. [↑](#footnote-ref-4)
5. The ICRC database is available at: http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx (accessed on 3 September 2015). [↑](#footnote-ref-5)
6. The ICMP database is an electronic source available at: www.ic-mp.org/fdmsweb/index.php?w=mp\_details&l= en (accessed on 3 September 2015). [↑](#footnote-ref-6)
7. This may be due to the fact that the month of disappearance in copy of Mrs Milevka Ristić’s Serbian language Victim Identification Form is difficult to read and may have been misread by the translator. [↑](#footnote-ref-7)
8. There are no investigative reports in the file with respect to Mrs Milevka Ristić and the investigative file regarding Mr Anđelko Ristić was combined with his wife, Mrs Jovanka Ristić. [↑](#footnote-ref-8)
9. The SRSG provided two separate responses; one regarding Mrs Milevka Ristić and Mr. Mirko Ristić, the other regarding Mrs Jovanka Ristić and Mr Anđelko Ristić. [↑](#footnote-ref-9)
10. Referring to the absence of an Ante-Mortem Investigation Report on the death of Mrs Milevka Ristić, and the Victim Identification Form for Mr Mirko Ristić. The original Serbian language version of the Victim Identification Form for Mr. Mirko Ristićwas located by the Panel in the file. There is no Ante-mortem report for Mrs Milevka Ristić in the file. [↑](#footnote-ref-10)