

**OPINION**

**Date of adoption: 24 June 2015**

**Case No. 233/09**

**Petar Jovičić**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 24 June2015,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Mr 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, decides as follows:

**I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was introduced on 14 April 2009 and registered on 30 April 2009.
2. On 12 May 2010, the Panel requested the complainant to provide additional information. The complainant’s response was received on 14 October 2010.
3. On 10 November 2010, the Panel requested the complainant to provide more information. The complainant’s response to this request was received on 25 November 2010.
4. On 10 November 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on the admissibility of the complaint.
5. On 14 December 2011, the SRSG provided his response.
6. On 17 March 2012, the Panel declared the complaint admissible.
7. On 2 April 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the documents relevant to the matter.
8. Responding to the Panel’s request, on 29 June 2012 the SRSG provided additional comments on the admissibility of the complaint, as well as copies of the relevant documents, relied upon by UNMIK.
9. On 11 June 2013, the Panel requested UNMIK to confirm whether the disclosure of files concerning the case could be considered final.
10. On 18 June 2013, UNMIK confirmed to the Panel that all available relevant files have been disclosed.
11. On 17 April 2015, the Panel requested the Department of Forensic Medicine (DFM) of the European Union Rule of Law Mission in Kosovo (EULEX) to provide additional information.
12. On 20 April 2015, the DFM provided its response.
13. On 27 April 2015, the Panel asked the DFM for further clarification.
14. On 28 April 2015, the DFM provided its response.
15. On 14 May 2015, the Panel requested additional clarification from the International Committee of the Red Cross (ICRC).
16. On 18 May 2015, the ICRC responded.
17. On the same day, the Panel requested further clarification from the ICRC. The ICRC did not respond to this request.

**II. THE FACTS**

## General background[[2]](#footnote-2)

1. 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).
2. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army 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.
3. 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 Organization for Security and Cooperation in Europe (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.
4. 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.
5. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbs, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
6. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,653 are listed as still missing by the ICRC as of May 2015.
7. 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 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.
8. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with 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. However, UNMIK retained some responsibility in the field of international cooperation in criminal matters.

## Circumstances surrounding the alleged disappearance of Mrs Krasenka Aljinović’s mortal remains

1. The complainant is the husband of Mrs Krasenka Aljinović.
2. He states that on 15 June 1999 he left Prizren for security reasons, but his wife stayed in the Prizren city hospital, where she had been earlier admitted. He was accommodated in a centre for displaced persons in Fushё Kosovё/Kosovo Polje, during which time he requested various authorities, including UNMIK and KFOR, to move her there, but his requests were not granted. On 14 August 1999 he learned from an ICRC staff member that his wife had passed away in the hospital, on 8 August 1999. He was also told that she had been buried by the Municipality, in the part of the Prizren city cemetery where local Serbs who had been killed were buried. The same ICRC staff member provided the complainant with a copy of the death certificate and a photograph of Mrs Krasenka Aljinović’s grave. The complainant submits that he never received the original death certificate or his wife’s personal documents and belongings, including her jewellery.
3. The complainant provides the Panel with a copy of an ICRC certificate, dated 18 October 1999, addressed to Mrs Krasenka Aljinović’s daughter in Croatia, which confirms that Mrs Aljinović had died in Prizren hospital, on 8 August 1999. He also attaches a copy of an undated death certificate from Prizren hospital, confirming the death of Mrs Aljinović, on 8 August 1999. Likewise, the complainant attaches a Prizren hospital report which confirms that she was treated in the hospital from 20 March 1999 until her death on 8 August 1999, at 15:15, and states the cause of her death.
4. The complainant also submits that he later came to know that all the mortal remains buried in the Serbian part of the Prizren cemetery were exhumed, including those of his wife, and apparently transported to Rahovec/Orahovac mortuary. He continues that he contacted Mr S.D., a forensic doctor working for the Serbian Government and consulted him about the matter. Mr S.D. apparently told him that he was present at the cemetery when all the mortal remains from there were being exhumed. He promised to review his notes and video recording to determine whether Mrs Krasenka Aljinović’s mortal remains had also been exhumed. A couple days later, in a phone conversation, Mr S.D. stated to the complainant that his wife’s mortal remains had indeed been removed from their burial place and taken to Rahovec/Orahovac.
5. The complainant continues that he himself went to Prizren in August 2005 and visited the cemetery. A representative of the administration of the cemetery showed the complainant the area where the Serbs had been buried. The area appeared to have been completely excavated and a few broken burial crosses were stacked nearby. The complainant provided the Panel with the photographs that he took on that occasion.
6. The complainant did not clarify to which authorities he reported the disappearance of his wife’s mortal remains. A certificate of the Red Cross of Serbia and Montenegro, dated 13 June 2005, addressed to the complainant, confirms that Mrs Krasenka Aljinović is considered missing as of 14 June 1999, and is included in the list of the Kosovo missing persons.
7. He also informs the Panel that in March 2003, the ICMP collected the blood samples from the daughter and two brothers of Mrs Krasenka Aljinović, for possible DNA identification.
8. The 1st, 2nd, 3rd and 4th editions of the ICRC book *Persons missing in relation to the events in Kosovo* (issued in May 2000, March 2001, February 2004 and June 2007 respectively) do not list Mrs Krasenka Aljinović among the missing persons. However, the ICRC *Family Links* electronic resource contains an open tracing request in relation to the complainant’s wife; it states 8 August 1999 as the date of her disappearance[[3]](#footnote-3). It is not clear when this tracing request was opened.
9. The entry in relation to Mrs Krasenka Aljinović in the online database maintained by the ICMP[[4]](#footnote-4) states 18 August 1999 as the date of her disappearance and indicates that “Not Enough Reference Samples Collected”.

## The documents presented to the Panel

1. In the present case, the Panel received from UNMIK copies of the documents previously held by the UNMIK Police and OMPF. When presenting the file to the Panel, on 29 June 2012, the SRSG informed the Panel that the files are “rudimentary” and are “not quite useful for the preparation of ... comments”. However, on 20 April 2015, UNMIK confirmed to the Panel that no more relevant documents had been obtained.

### *OMPF file*

1. This part of the file contains an undated Victim Identification Form for Mrs Krasenka Aljinović, completed in handwriting (in English). Besides recording her personal details and ante-mortem description, it provides the names and full contact details of her daughter and the complainant. The field “reasons for assuming that person concerned is victim of disaster” reads:

[Mrs Krasenka Aljinović] was hospitalised in Prizren hospital from 19th March 1999. The informant says she died in the hospital on 8th August, 1999. After that she was buried at the Prizren cemetery by KFOR, UNMIK and ICRC members.

1. The file further contains an ICRC Victim Identification Form, completed in handwriting (in Serbian), cross-referenced with the case no. 2003-000010. Besides recording her personal details and ante-mortem description, it provides the names and full contact details of her daughter, brother and the complainant. The field “details of disappearance” on the first page states: “passed away at Prizren hospital on 8 August 1999”; the field “Place of eventual burial” reads (original emphasis preserved): “*apparently buried at the cemetery in Prizren by “Hygijena” enterprise*.” The field “circumstances of the disappearance” on the page F2 reads “*died in the hospital in Prizren; buried at the Orthodox cemetery but the exact place is not known*”. Attached to this form are her photograph, a handwritten document providing the details of persons involved in her burial and complete contact details of her daughter and brother, in Croatia and Serbia proper.
2. The file also contains copies of Mrs Krasenka Aljinović’s birth certificate and two forms, dated 14 April 1999, by which she reported her residency in Prizren.
3. Also in the file is a copy of an extract from the registry of deaths of the Municipality of Prizren, dated 27 December 1999. It confirms that the death of Mrs Krasenka Aljinović, which had occurred on 8 August 1999, is registered under the entry no. 67/53–1999. This certificate is followed by copies of the same documents related to her death, issued by the ICRC and the Prizren hospital (see §§ 28 above).
4. At the end of this part of the file are blurred copies of seven photographs, without any explanatory notes.

### *The UNMIK Police file*

*Case 2002-000661*

1. This part of the file contains five documents from the MPU investigative file no. 2002-000661, cross-referenced to the ICRC no. BLG-804538-01. It is related to the disappearance of B.S., on 16 June 1999, in Prizren. Two of these documents are undated Individual Case History forms printed from the MPU database. Both contain the following entry:

According to ICRC information S.B., Aljinovic Krasenka and C.M. should be buried in Prizren orthodox cemetery. We exhumed the cemetery in 2002 with site-code FQA...

*Case 2003-000010*

1. The file contains an MPU Case Continuation Report, affixed with a case no. 2003-000010, related to Mrs Krasenka Aljinović’s body, with a single entry, dated 6 February 2003, stating:

Input DB & DVI OK.

Attached are:

1. Photos of the gravesite (Priz. Orth. Cemet.)

2. Death Certificate

3. Doctor’s record (medical report with diagnosis and cause of death).

### *The confirmation of the DFM*

1. At the Panel’s request, on 20 April 2015, the DFM clarified that in 2002 there was indeed an exhumation conducted in the Prizren cemetery (the location with a site code “FQA”) and that there are four unidentified female bodies from that exhumation still in the DFM’s mortuary.
2. The DFM explained that the physical description of these four bodies differs significantly from that of Mrs Krasenka Aljinović (e.g. she was much taller). Moreover, the autopsies had established that two of those unidentified women had died of gunshot wounds, while the other two had died from “blunt force trauma[s]”. As Mrs Krasenka Aljinović had died of natural causes, the DFM is positive that none of those mortal remains could be those of her.
3. On 28 April 2015, the DFM further confirmed that, contrary to the above information from the ICMP webpage (see § 33), there are sufficient samples to enable DNA identification of Mrs Krasenka Aljinović’s mortal remains. However, no DNA match has been found. Thus, the DFM is of the opinion that her mortal remains were not exhumed from the Prizren cemetery in 2002.

### *The confirmation of the ICRC*

1. On 18 May 2015, at the Panel’s request, the ICRC office in Pristina confirmed to the Panel that Mrs Krasenka Aljinović had been reported to the ICRC as missing by her family, and the ICRC had opened a case with reference no. BLG-804796-01 in her respect. To date, the ICRC does not have any new information on the whereabouts of her mortal remains, therefore the case remains open in the ICRC records.
2. The ICRC further stated that her name appeared for the first time in the 5th edition of the ICRC book *Persons missing in relation to the events in Kosovo*, published in April 2013. The ICRC also clarified that their practice is to consider as cases of missing persons situations where a person was seen dead (regardless of the causes of death) but the whereabouts of the mortal remains (burial site) are unknown to the family.
3. The ICRC did not respond to the Panel’s question as to when the tracing request for Mrs Krasenka Aljinović was opened and when (or if at all) the ICRC informed UNMIK that she was considered a “missing person”.

**III. THE COMPLAINT**

1. The complainant complains about the failure by UNMIK to properly notify him about the death of his wife and about the displacement of her mortal remains, causing him pain and suffering.
2. The Panel considered that the complainant invokes a violation of his right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the European Convention on Human Rights (ECHR), and his right to respect for private life and family life, guaranteed by Article 8 of the ECHR.

**IV. THE LAW**

## 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. 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.
3. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
4. 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 § 52).
5. 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).

## Alleged Violation of Article 3 of the ECHR

## The parties’ submissions

1. The complainant in substance alleges violations concerning the failure by UNMIK to properly notify him about the death of his wife and about the displacement of her mortal remains, causing him pain and suffering.
2. The SRSG provided no comments on the merits of the complaint. Nevertheless, he agrees to the admissibility of the parts of the complaint related to the alleged removal and subsequent loss of the mortal remains of the complainant’s wife, but only from the moment when the case was reported to UNMIK, and until the end of the Panel’s temporal jurisdiction, which in this case would be 9 December 2008. In his view, the rest of the complaint should be declared inadmissible *ratione personae.*

## The Panel’s assessment

1. The complainant in substance claims that a prolonged lack of information about the whereabouts of his wife’s mortal remains amounts to inhuman or degrading treatment within the meaning of Article 3.

### *The general principles*

1. Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult security circumstances.
2. The Panel recalls that the essence of the complaint before it under Article 3 of the ECHR is not that there has been a serious human rights violation concerning the late Mrs Krasenka Aljinović, but rather that of her husband’s pain and suffering in not being able to discover where his wife is buried.
3. With respect to such cases, the European Court states that “in order for a separate violation of Article 3 of the Convention to be found in respect of the victim’s relatives, there should be special factors in place giving their suffering a dimension and character distinct from the emotional distress inevitably stemming from the aforementioned violation itself. The relevant factors include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question and the involvement of the applicants in the attempts to obtain information about the fate of their relatives” (ECtHR [GC], *Janowiec and Others v. Russia,* nos 55508/07 and 29520/09, judgment of 21 October 2013, § 177).
4. In this connection, the Court reiterates that “a family member of a ‘disappeared person’ can claim to be the victim of treatment contrary to Article 3 in cases where the disappearance was followed by a long period of uncertainty until the body of the missing person was discovered. The essence of the issue under Article 3 in this type of case lies not so much in a serious violation of the missing person’s human rights but rather in the authorities’ dismissive reactions and attitudes in respect of that situation when it was brought to their attention” (*ibid*., § 178).
5. The Panel recalls that the authorities have a duty to comply with the requirements of Article 3 irrespective of whether they were responsible for the original act of death or disappearance (see *Açış v. Turkey*, no. 7050/05, §§ 36, 51-54, 1 February 2011, in which the applicants’ husband and father was abducted by the separatist movement). In the European Court’s view, regardless of that “[i]t can also result from the failure of the authorities to respond to the quest for information by the relatives or from the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts, where this attitude may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the fate of the missing person” (ibid., § 178; see also, among many others, ECtHR, *Açış v. Turkey*, no. 7050/05, judgment of 1 February 2011, §§ 36 and 51‑54; ECtHR *Varnava and Others*, cited in § 55 above, at § 200; ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, § 114; ECtHR, *Gongadze v. Ukraine*, no. 34056/02, judgment of 8 November 2005, § 184). The Court has also considered finding of a separate violation of Article 3 to be justified in situations of confirmed death where the applicants were direct witnesses to the suffering of their family members (see ECtHR [GC], *Janowiec and Others v. Russia*, cited in § 61 above, at § 181, and the cases cited therein).
6. The Panel considers that, although Mrs Krasenka Aljinović was not a victim of any human rights violation, the situation of her missing body should be treated as comparable to that of a missing person for the purpose of determining whether her close relative – her husband – has suffered a violation of his right protected by Article 3 of the ECHR. In this respect the Panel recalls the ICRC’s practice to qualify as cases of missing persons situations where there is no doubt of a person’s death, but the whereabouts of his or her mortal remains are unknown (see § 47 above).
7. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian by nature, as it enjoins the authorities to react to the plight of the relatives of the dead or disappeared individual in a humane and compassionate way” (see ECtHR [GC], *Janowiec and Others v. Russia*, cited above, at § 152).
8. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts. On the contrary, in the Court’s view, an assessment of the way in which the authorities of the respondent State reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v.Turkey*, cited in § 63 above, at § 45).

### *Application of those principles to the present case*

### *Preliminary observations*

1. The Panel notes the proximity of the family ties between the complainant and Mrs Krasenka Aljinović, as the latter was the complainant’s spouse.
2. The Panel emphasises that the following facts appear not to be disputed by the parties: that Mrs Aljinović had indeed died of natural causes in Prizren hospital, on 8 August 1999; that her body was subsequently buried at the Prizren city cemetery; that the exact location of her grave in that cemetery is not known; and that after 1999 at least one exhumation of a number of mortal remains, suspected to be those of the unidentified local Serbian residents who had been killed shortly after the arrival of KFOR and UNMIK in Prizren and the surrounding area, was conducted in that cemetery.

### *Alleged lack of information in relation to the death of Mrs Krasenka Aljinović*

1. The Panel notes the complainant’s statement that on 14 August 1999 he was made aware of his wife’s death, by an ICRC staff member. The same ICRC staff member also provided him with a copy of the medical death certificate, issued by the Prizren hospital, and a photograph of Mrs Aljinović’s grave in Prizren cemetery; the complainant provided a copy of that certificate to the Panel (see § 27 above)
2. In addition, shortly thereafter, the daughter of Mrs Krasenka Aljinović received an ICRC certificate, also confirming Mrs Aljinović’s death; a copy of this certificate was also made available to the Panel (see § 28 above).
3. Thus, considering all the circumstances on the ground in Kosovo in 1999, the Panel is satisfied that the complainant and his family were properly notified about the death of Mrs Krasenka Aljinović and that they were provided with the relevant documents.
4. Therefore, in view of the evidence before it, the Panel is unable to establish a violation of Article 3 in this part of the complaint.

### *Alleged exhumation of Mrs Krasenka Aljinović’s mortal remains*

1. As the complainant further alleges, his wife’s mortal remains were later exhumed, without his knowledge and agreement, probably by UNMIK or KFOR; according to the complainant, their whereabouts remain unknown.
2. In support of his allegation, the complainant also states that Mr S.D., a forensic doctor working for the Serbian Government, told him that he was present during that exhumation conducted by the OMPF and confirmed that the mortal remains of Mrs Krasenka Aljinović had indeed been removed from the burial place and taken to the forensic institution in Rahovec/Orahovac (see § 29 above). The complainant visited the Prizren cemetery in 2005, where he was shown the area where his wife’s body was presumably buried; the area appeared to have been completely excavated (see § 30 above).
3. The complainant presented the Panel with a set of photographs that he had taken on that occasion. Although those pictures show a part of the Prizren cemetery with a number of freshly-dug graves it is not clear what parts of the cemetery are depicted or whether they show the actual location of Mrs Krasenka Aljinović’s grave.
4. It was confirmed to the Panel by the DFM that in 2002 the OMPF had indeed excavated certain graves in the Prizren cemetery (site code “FQA”), in order to exhume the mortal remains of unidentified persons, mostly Serbs, buried there after the conflict (see § 43 above). The DFM also confirmed that they have sufficient DNA samples to enable a positive identification of Mrs Krasenka Aljinović’s mortal remains, but until now no match has been found. Therefore, according to the DFM, Mrs Aljinović’s mortal remains have probably not been exhumed and thus are likely to be still in the Prizren cemetery (see § 45 above).
5. Recalling that that the exact location of Mrs Krasenka Aljinović’s grave in the Prizren cemetery is not known, the Panel considers that there is doubt whether or not her mortal remains had been exhumed from the original burial place. The Panel is unable to discern from the evidence presented by the complainant and the information from the DFM whether her mortal remains were indeed taken away.
6. Therefore, in view of the evidence before it, the Panel is again unable to establish a violation of Article 3 in this part of the complaint.

### *UNMIK’s alleged failure to act in relation to the loss of Mrs Krasenka Aljinović’s mortal remains*

1. The Panel considers that it cannot completely rule out that the mortal remains of Mrs Krasenka Aljinović were indeed exhumed without the knowledge and consent of her family and were subsequently misplaced by UNMIK authorities. However, as mentioned above, it is also possible that her mortal remains are still in the original burial place, but the problem lies in locating the actual grave.
2. The Panel recalls in this respect that the ICRC and the ICMP still consider Mrs Krasenka Aljinović as a missing person (see §§ 33 - 34 above).
3. Although there is no doubt that Mrs Krasenka Aljinović had died of natural causes, there might be still an obligation on the part of the authorities to investigate the matter, similarly to that with respect to disappearances under Article 2 of the ECHR (right to life, procedural part). However, such responsibility would only be triggered once the matter has come to their attention (see, e.g., ECtHR [GC], *Šilih v Slovenia*, no. 71463/01, § 157; ECtHR, *Gongadze v. Ukraine*, cited in § 63 above, § 185).
4. The Panel has on a number of occasions found that UNMIK authorities were obliged to investigate disappearances from the time they were made aware of such allegations (see e.g. *Bulatović*, no. 165/09, decision of 21 December 2011, §§ 16 - 17; *Barać*, no. 149/09, decision of 1 October 2012, §§ 15 - 16). The Panel has also considered ICRC notifications of disappearances to UNMIK to be sufficient to trigger the obligation to investigate under Article 2 (see, among others, *Mitić and others*, nos 63/09 and others, opinion of 14 March 2014, §§ 45 and 156).
5. In this regard, the Panel acknowledges that the file before it includes a document confirming that there was an MPU case opened in relation to Mrs Krasenka Aljinović, probably in 2003 (see § 42 above). The Panel notes that the MPU file contains the death certificate confirming that she died of natural causes and therefore indicating that it was not caused by a criminal act.
6. Thus, it appears to the Panel that MPU, based on the information available to them, had initially qualified the case of Mrs Krasenka Aljinović as a possible killing and/or disappearance (see § 42 above). However, upon confirming that she had in fact died of natural causes and was subsequently buried in the Prizren cemetery, and because of its specific mandate (see § 24 above), the MPU could discontinue its investigation, as there was no doubt as to her fate.
7. Furthermore, the Panel considers that, as there was no issue under Article 2 in this case, the relevant UNMIK authorities did not have to “act of their own motion once the matter has come to their attention”; they could legitimately expect “the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures” in this respect (see, *a contrario*, ECtHR [GC], *Ílhan v. Turkey*, no. 22277/93, judgment of 27 June 2000, § 63, ECHR 2000-VII; ECtHR, *Rantsev v. Cyprus* and Russia, no. 25965/04, judgment of 7 January 2010, § 232; ECtHR [GC], *Al-Skeini and Others v. United Kingdom*, no. 55721/07, judgment of 7 July 2011, § 165).
8. However, the complainant has not alleged that he contacted any UNMIK authorities to inform them of the situation and request them to clarify the location of his wife’s mortal remains; he only refers to a contact with Mr S.D., an official of the Serbian government dealing with missing persons (see § 29 above). The Panel reiterates that the file contains no indication that in the instant case UNMIK authorities were ever informed or were otherwise made aware of the alleged disappearance of Mrs Krasenka Aljinović’s mortal remains and requested to locate them.
9. The Panel regrets that until now the complainant has not been able to find his wife’s final resting place, which undoubtedly causes him pain and suffering. However, in the described circumstances the Panel is not persuaded that by their conduct the UNMIK authorities caused or in any way contributed to the complainant’s mental distress in connection with the death and subsequent alleged disappearance of the mortal remains of Mrs Krasenka Aljinović.
10. Therefore, in this case the Panel finds no violation of Article 3 by UNMIK.

## Alleged Violation of Article 8 of the ECHR

## The parties’ submissions

1. The complainant in substance alleges violations concerning the failure by UNMIK to properly notify him about the death of his wife and about the displacement of her mortal remains, causing him pain and suffering.
2. The SRSG’s comments in relation to the complaint under Article 3 equally apply to the complaint under Article 8 (see § 57 above).

## The Panel’s assessment

### *The general principles*

1. The Panel refers to the jurisprudence of the European Court of Human Rights, which states in relation to the concept of “family life” that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in effective “respect” for family life. However, there is no precise definition of the boundaries between the existing positive and negative obligations under this article, where “the fair balance … has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation” (see, e.g., ECtHR, *Kroon and Others v. The Netherlands*, no. 18535/91, judgment of 27 October 1994, § 31; ECtHR, *Znamenskaya v. Russia*, no. 77785/01, judgment of 2 June 2005, § 28).
2. The Court has determined that the right to bury one’s relatives (not distinguishing between the complete body or its parts) is protected by Article 8 and that an interference with it may constitute a violation of the applicant’s rights to private and family life (see ECtHR, *Girard v. France*, no. 22590/04, judgment of 30 June 2011, § 101).
3. The Court has also considered violations of the rights protected by Article 8 in the following situations: excessive delay in the restitution of a body after an autopsy, or of tissue samples taken from the body, after the end of relevant criminal proceedings (see *Pannullo and Forte v. France*,no. 37794/97, judgment of 30 October 2001, §§ 35-36; *Girard v. France*, cited above, § 107); refusal to transfer an urn containing the ashes of the applicant’s husband (see *Elli Poluhas Dödsbo v. Sweden*, no. 61564/00, judgment of 17 January 2006, §§ 19-29); refusal to release the body of the applicant’s husband killed during an anti-terrorist operation (see *Maskhadova and Others v. Russia*, no. 18071/05, judgment of 6 June 2013, §§ 225 - 238).
4. In addition, the case-law holds that the relevant authorities must be made aware of a situation of an alleged infringement of the rights protected by Article 8 and that the appropriate legal or administrative process should take place before a complaint under this article is filed. Although positive obligations on the authorities may exist, the authorities are not obliged to act upon their own initiative, in the absence of a formal request from the party whose rights under this provision are allegedly affected (see e.g. ECtHR, *Pannullo and Forte v. France*, cited above; ECtHR, *Znamenskaya v. Russia*, cited above; ECtHR, *Zorica Jovanović v. Serbia*, no. 21794/08, judgment of 26 March 2013).

### *Application of those principles to the present case*

1. The Panel notes that the existence of family ties between the complainant and Mrs Aljinović is not disputed by the parties. The other relevant undisputed facts were outlined above (see § 68).
2. However, as already mentioned above, the Panel has not found sufficient evidence to prove, *first*, that the mortal remains of the complainant’s wife were indeed removed from the grave, and *second*, that the complainant had complained to the relevant UNMIK authorities about that, or that he had unsuccessfully requested UNMIK to establish the whereabouts of her mortal remains. Therefore, in view of the evidence before it, the Panel is unable to establish a violation of Article 8.
3. The Panel reiterates its regrets that until the present day the complainant has not been able to find the final resting place of his wife’s mortal remains, which undoubtedly causes him pain and suffering. However, the Panel does not find sufficient evidence that UNMIK authorities in any way interfered with the complaint’s right to family life. Therefore, the Panel concludes that there was no violation of the complainant’s rights protected by Article 8 of the ECHR by UNMIK.
4. In this regard, the Panel advises that UNMIK should liaise with the relevant authorities in Kosovo in order to assist the complainant, Mr Petar Jovičić, in the location of his wife’s mortal remains.

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN NO VIOLATION OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN NO VIOLATION OF ARTICLE 8 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.**

 Andrey Antonov Marek Nowicki

 Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCPR -** International Covenant on Civil and Political Rights

**DFM** - Department of Forensic Medicine

**ECHR** - European Convention on Human Rights

**ECtHR**- European Court of Human Rights

**EU** - European Union

**EULEX** - European Union Rule of Law Mission in Kosovo

**FRY** - Federal Republic of Yugoslavia

**HRAP** - Human Rights Advisory Panel

**ICMP** - International Commission of Missing Persons

**ICRC** - International Committee of the Red Cross

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

**MPU** - Missing Persons Unit

**NATO** - North Atlantic Treaty Organization

**OMPF** - Office on Missing Persons and Forensics

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

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

**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. See: ICRC database [electronic source] - <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 23 June 2015). [↑](#footnote-ref-3)
4. The ICMP database [electronic source] - [www.ic-mp.org/fdmsweb/index.php?w=mp\_details&l=en](http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en) (accessed on 23 June 2015). [↑](#footnote-ref-4)