

**Bogoljub KOSTIĆ, Pavle KOSTIĆ, Živanka PATRNOGIĆ, Petra KOSTIĆ, Kristina NIKOLIĆ, Vesna VOJINOVIĆ, Slavica BANZIĆ and Dragica BOŽANIĆ**

**against**

**UNMIK**

Cases nos: 111/09, 117/09, 143/09, 178/09, 179/09, 180/09, 230/09, 231/09, 232/09, 240/09, 241/09, 247/09, 253/09, 254/09, 263/09, 284/09 and 286/09

**OPINION[[1]](#footnote-1)[\*]**

**23 October 2015**

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The Human Rights Advisory Panel, sitting on 23 October 2015,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, makes the following findings and recommendations:

# PROCEEDINGS BEFORE THE PANEL

1. The complaints of Mr Bogoljub Kostić (cases nos 111/09, 231/09 and 232/09) were introduced on 8 April 2009; the complaints of Mr Pavle Kostić (cases nos 117/09 and 230/09) were introduced on 14 April 2009; the complaint of Mrs Živanka Patrnogić (case no. 143/09) was introduced on 7 April 2009; the complaints of Mrs Petra Kostić (cases nos 178/09, 179/09 and 180/09) were introduced on 8 April 2009; the complaints of Ms Kristina Nikolić (cases nos 240/09 and 241/09) were introduced on 7 April 2009; the complaints of Mrs Slavica Banzić (cases nos 253/09, 254/09 and 263/09) were introduced on 10 April 2009; the complaints of Mrs Dragica Božanić (cases nos 284/09 and 286/09) were introduced on 3 April 2009; and the complaint of Mrs Vesna Vojinović (case no. 247/09) was introduced on 30 April 2009. All complaints were registered on 30 April 2009.
2. At the Panel’s requests, UNMIK presented copies of the investigative documents relevant to these matters on 30 March 2012, 27 April 2012, 16 May 2012 and 22 August 2013.
3. For the complete history of the proceedings in the cases 111/09, 117/09, 178/09, 179/09, 180/09, 230/09, 231/09, 232/09, 240/09, 241/09, 253/09, 254/09, 263/09, 284/09 and 286/09, the Panel refers to its admissibility decision of 17 August 2012 (§§ 1-14). With respect to the complete history of the proceedings in the cases nos 143/09 and 247/09, the Panel refers to its admissibility decision of 21 August 2012 (§§ 1-6)[[2]](#footnote-2).
4. On 17 August 2012, the Panel declared the cases nos 111/09, 117/09, 178/09, 179/09, 180/09, 230/09, 231/09, 232/09, 240/09, 241/09, 253/09, 254/09, 263/09, 284/09 and 286/09 admissible with respect with respect to Article 2 of the European Convention on Human Rights (ECHR). In addition, by the same decision, the case no. 232/09 was declared admissible in relation to the Article 3 of the ECHR, while the cases nos 111/09, 178/09, 254/09, 263/09 and 284/09 were declared admissible in relation to Article 5 of the ECHR.
5. On 31 August 2012, the Panel forwarded this decision on admissibility to the Special Representative of the Secretary-General (SRSG)[[3]](#footnote-3), requesting UNMIK’s comments on the merits of the complaints.
6. On 21 August 2012, the Panel declared the cases nos 143/09 and 247/09 admissible with respect with respect to Article 2 (right to life) of the ECHR.
7. On 10 September 2012, the Panel forwarded its decision on admissibility of the cases nos 143/09 and 247/09 to the SRSG, requesting UNMIK’s comments on the merits of the complaint.
8. Following the Panel’s inquiries, on 4 October 2012, UNMIK requested the Archives and Records Management Section of the UN Headquarters in New York to locate and return to UNMIK a number of investigative files related to a number of complaints before the HRAP.
9. On 14 December 2012, UNMIK received the requested investigative files from the UN Headquarters in New York. On 17 December 2012, UNMIK presented those documents, including the file related to these complaints, to the Panel.
10. On 13 March 2014, pursuant to Rule 20 of its Rules of Procedure, the Panel further joined the cases nos 143/09 and 247/09 with the cases nos 111/09, 117/09, 178/09, 179/09, 180/09, 230/09, 231/09, 232/09, 240/09, 241/09, 253/09, 254/09, 263/09, 284/09 and 286/09.
11. On 17 March 2014, the Panel forwarded this joinder decision to the SRSG, requesting UNMIK’s comments on the merits of the joined case, containing all 17 complaints.
12. On 7 July 2014, the SRSG presented UNMIK’s response in relation to the merits of the complaint, together with electronic copies of additional investigative files relevant to the case.
13. On 15 March 2015, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning this joint case could be considered final.
14. On 18 May 2015, UNMIK provided its response.
15. On 25 June and 22 July 2015, at the Panel’s request, Kosovo Special Prosecution Office (SPRK) provided additional information.

# THE FACTS

## General background[[4]](#footnote-4)

1. The events at issue took place in the territory of Kosovo in July 1998 and continued 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 (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.
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 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.
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 International Committee of the Red Cross (ICRC) as of May 2015.
7. 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.
8. 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.
9. 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”.
10. 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. A specialised Bureau for Detainees and Missing Persons (BDMP), responsible for centralising information received by civilian officers, was established within the Office of the SRSG[[5]](#footnote-5).
11. 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. All information collected by the BDMP was transferred to the OMPF[[6]](#footnote-6). 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.
12. 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.
13. On the same date, UNMIK and EULEX signed an 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.

## Circumstances surrounding the abduction / detention / disappearance and/or killing of the victims

1. All complainants are former residents of Kosovo. All complainants are currently living in Serbia proper.
2. Mr Bogoljub Kostić is the son of Mr Mladen Kostić and Mrs Angelina Kostić, and brother of Mr Nebojša Kostić. Mr Pavle Kostić is the son of Mr Anđelko Kostić and brother of Mr Živko Kostić. Mrs Petra Kostić is the mother of Mr Lazar Kostić and Mr Todor Kostić. Ms Kristina Nikolić is the daughter of Mr Rajko Nikolić and a sister of Mr Cvetko Nikolić. Mrs Slavica Banzić is the wife of Mr Spasoje Banzić and daughter-in-law of the late Mrs Desanka Banzić. Mrs Dragica Božanić is the wife of Mr Mladen Božanić and mother of Mr Nemanja Božanić; Mrs Živanka Patrnogić (in case no. 143/09) is the widow of Mr Duško Patrnogić. Ms Vesna Vojinović (in case no. 247/09) is the sister of Mr Aleksandar Stanojević.
3. The complainants supplement each other in their description of the events that took place on 18 July 1998 and the following days, during an armed assault by the KLA on the villages of Opterushё/Opteruša and Retimlё/Retimlje, Rahovec/Orahovac municipality. This following overview is based on their information and that contained in the investigative file.

### *Situation in Rahovec/Orahovac area*

1. The town of Rahovec/Orahovac is located some 60 kilometres south west of Prishtinё/Priština. It is surrounded by numerous villages including Opterushё/Opteruša, Retimlё/Retimlje, Zoçishtë/Zoćište and Hoca i Madhe/Velika Hoća. A monastery “Saint Healers” (Sveti Vraći) of the Serbian Orthodox Church is located in the village Zoçishtë/Zoćište.
2. Prior to July 1998, neither the Yugoslav Army (VJ) nor the forces of the Serbian Ministry of Internal Affairs (MUP) had any special presence in Rahovec/Orahovac, except for regular personnel stationed there. Instead, the authorities had provided some Serbian civilians in the town and in the villages with light weapons with which to defend themselves.
3. The first signs of an impending attack by the KLA in the area came in early 1998 when the KLA began digging trenches and building sandbag walls in Rahovec/Orahovac and Hoca i Madhe/Velika Hoća. In mid-May 1998, the KLA seized the hill above the town and thereby took control of the traffic between Rahovec/Orahovac and Malishevë/Mališevo. Sporadic attacks and abductions of Serbian residents in the area were reported during May and June of 1998. In early July 1998, more trenches were dug in Opterushё/Opteruša and Zoçishtë/Zoćište. Around the same time, a tacit agreement was reached between Serbian and Albanian civilians that they would protect and warn each other of attacks by either the KLA or Serbian/Yugoslav forces. Thus, some Serbian residents were warned by their Albanian neighbours that an attack by the KLA was imminent.

### *The KLA attack on Rahovec/Orahovac and surrounding villages*

1. The KLA attack on the town of Rahovec/Orahovac and the surrounding villages took place between 17 and 19 July 1998, although some fighting continued in nearby hills until 21 July 1998. The KLA retreated from Rahovec/Orahovac between 19 and 21 July 1998, when VJ and MUP forces arrived and took control of the area.

*Rahovec/Orahovac town*

1. The attacks commenced in Rahovec/Orahovac in the evening of 17 July 1998. The KLA seized the Health Centre and detained around 30 medical staff and patients inside the building. The men and women were separated and held in separate parts of the building, under guard; some were interrogated by the KLA. On 19 July 1998, Serbian and Roma women who were detained there were released and allowed to go home; five Serbian male detainees (staff and visitors) were abducted.
2. The same day, the KLA also abducted at least eleven Serbian and Roma civilians at roadblocks set up in the area around Rahovec/Orahovac. Partial mortal remains of some were found in mass graves in Kosovo, while others are still considered missing.

*Opterushё/Opteruša village*

1. The KLA attack on Opterushё/Opteruša also began in the late evening of 17 July 1998. The Serbian residents of the village resisted the attack for several hours with the firearms they possessed, but they surrendered in the early morning of 18 July 1998. After that they were loaded into a truck and transported out of the village, to an unknown location. At some point, the men were separated from the women.
2. While held in detention by the KLA, the women abducted from Opterushё/Opteruša village were reportedly interrogated and maltreated by the KLA. Not many details are known about the conditions in that “transit” detention location. On 19 July 1998, the KLA provided these women with a letter addressed to the Serbian residents of another village, Zoçishtë/Zoćište, offering them guarantees of personal safety in exchange for surrender. The women were then forced to walk to Zoçishtë/Zoćište village to deliver that letter.
3. Partial mortal remains of eight Serbian men abducted by the KLA from Opterushё/Opteruša village were found in mass graves in Kosovo.

*Retimlё/Retimlje village*

1. The Serbian residents of this village were attacked by the KLA, with gunfire, shells and grenades, in the early morning of 18 July 1998. One Serbian civilian (Mr Anđelko Kostić) was shot and killed during the attack. After some time, the KLA sent Mr S.S., a Serbian resident of Opterushё/Opteruša, as a messenger, advising the Serbs of Retimё/Retimlje to lay down their weapons and surrender, in exchange for which they would not be harmed. When the Serbian residents complied, the KLA members seized their weapons and searched their houses. After the searches, the KLA divided the Serbian men and women into two groups. The women were gathered together and taken to Zoçishtë/Zoćište village, while the 16 men were placed into a truck and driven towards Opterushё/Opteruša.
2. The partial mortal remains of the three of the Serbian males abducted from Retimlё/Retimlje were later found in mass graves in Kosovo.

*Zoçishtë/Zoćište village*

1. The village of Zoçishtë/Zoćište was attacked by the KLA on 19 July 1998, in the afternoon, but most of the Serbian villagers had fled before the attack. The residents of Zoçishtë/Zoćište village, civilians who could not flee and the people who arrived from Retimlё/Retimlje and Opterushё/Opteruša took shelter in the Serbian Orthodox monastery “Sveti Vraći”, located in this village. Furthermore, the women abducted from Opterushё/Opteruša village by the KLA, arrived at the monastery on 19 July 1998 (see para 39 above), some time before the attack.
2. The monastery itself also came under attack on 20 and 21 July 1998. The clergy of the monastery defended it for a number of hours, but eventually surrendered. After the KLA members searched the monastery premises for weapons, all Serbs who were in the monastery, including the monks, were driven to a building in Semetishtё/Semetište village, Suharekё/Suva Reka municipality. They were held at that location for two days; during that time some of them, were questioned. All of them were later handed over to the ICRC.

### *The KLA detention centre in Malishevё/Mališevo*

1. A number of survivors reported that they had been detained by the KLA in a building in Malishevё/Mališevo. It also appears that a number of the Serbian men abducted by the KLA in the Rahovec/Orahovac area, including some of the relatives of the complainants in this case, were detained there.

### *Facts with regard to the abduction and killing of Mr Živko Kostić (case no. 117/09), Mr Lazar Kostić (case no. 179/09), Mr Todor Kostić (case no. 180/09), Mr Nebojša Kostić (case no. 231/09), Mr Rajko Nikolić (case no. 240/09), Mr Cvetko Nikolić (case no. 241/09), Mr Spasoje Banzić (case no. 253/09), Mr Mladen Božanić (case no. 284/09) and Mr Nemanja Božanić (case no. 286/09)*

1. On 18 July 1998, Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić and Mr Cvetko Nikolić (17 years old) were abducted by KLA members from Retimlё/Retimlje village, while Mr Spasoje Banzić, Mr Mladen Božanić and Mr Nemanja Božanić were abducted from Opterushё/Opteruša village, and taken in an unknown direction.
2. The complainants inform the Panel that all abductions were reported to the ICRC, the Yugoslav Red Cross and the Serbian MUP.
3. Mrs Petra Kostić states that she reported the abductions of Mr Lazar Kostić and Mr Todor Kostić to the UNMIK Department of Justice, the International Criminal Tribunal for former Yugoslavia (ICTY), the OSCE, relevant Serbian authorities and other organisations.
4. Mrs Kristina Nikolić adds that she also reported the abductions of Mr Rajko Nikolić and Mr Cvetko Nikolićto KFOR and the International Commission on Missing Persons.
5. Mrs Slavica Banzić informs the Panel that she reported the events to the ICRC, the MUP and an UNMIK International Public Prosecutor in Prishtinё/Priština.
6. Mrs Dragica Božanić states that she reported the events to the ICRC, the OSCE and the “Police”.
7. The names of all the above-listed victims are included in the list of missing persons, which was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF[[7]](#footnote-7).
8. In November 2004, the mortal remains of these named victims were located by the OMPF in a mass grave, in a cave near Volljak/Volujak village, Klinë/Klina municipality.
9. The OMPF conducted autopsies on all the mortal remains so found, in December 2004, but no causes of death were ascertained. Death certificates, confirmations of identity and identification certificates were issued by the OMPF in September 2006 (for Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Mladen Božanić and Mr Nemanja Božanić) and October 2006 (for Mr Rajko Nikolić, Mr Cvetko Nikolić and Mr Spasoje Banzić). All mortal remains were handed over to the respective families in October 2006.

### *Facts with regard to the abduction and killing of Mr Duško Patrnogić (case no. 143/09) and Mr Aleksandar Stanojević (case no. 247/09)*

1. Mrs Živanka Patrnogić (in case no. 143/09) is the widow of Mr Duško Patrnogić. Ms Vesna Vojinović (in case no. 247/09) is the sister of Mr Aleksandar Stanojević. The complainants state that on 17 July 1998, Mr Duško Patrnogić and Mr Aleksandar Stanojević were forced to leave their workplace, the Health Centre in Rahovec/Orahovac, by armed members of the KLA and were taken away in an unknown direction.
2. Later, both Mr Duško Patrnogić and Mr Aleksandar Stanojević were seen by a survivor eyewitness while in KLA detention; both were taken for execution, while the witness managed to escape. Their mortal remains were found in a mass grave in Malishevё/Mališevo municipality and subsequently identified.
3. The complainants state that the abductions were reported to the ICRC, UNMIK, the OSCE, KFOR, the Serbian MUP, and the Yugoslav Red Cross. They also filed a criminal complaint with the International Public Prosecutor (IPP) of the District Public Prosecutor’s Office (DPPO) of Prizren. The names of both Mr Duško Patrnogić and Mr Aleksandar Stanojević appear in the database compiled by the UNMIK OMPF; Mr Patrnogić’s name also appears in a list of missing persons communicated by the ICRC to UNMIK Police on 12 October 2001.
4. The mortal remains of Mr Duško Patrnogić were discovered on 18 May 2005 in Malishevë/Mališevo municipality. They were identified by the OMPF on 7 February 2006. According to the death certificate issued by the OMPF, the cause of death of Mr Duško Patrnogić was “two gunshots to the head and a gunshot to the trunk”. The mortal remains were handed over to the family on 13 October 2006.
5. The mortal remains of Mr Aleksandar Stanojević were discovered on 18 May 2005, also in Malishevë/Mališevo municipality. An autopsy performed by the OMPF listed his cause of death as “a gunshot to the head”; his mortal remains were subsequently handed over to the family, in November 2007.

### *Facts with regard to the abduction and disappearance of Mr Mladen Kostić (case no. 232/09)*

1. Mr Mladen Kostić was abducted on 18 July 1998, from Retimlё/Retimlje village, by KLA members and taken with the other above-listed victims in an unknown direction. Since that day his whereabouts have remained unknown.
2. The complainant inform the Panel that the abduction of Mr Mladen Kostić was reported to the ICRC, the Yugoslav Red Cross and the OSCE.
3. An ICRC tracing request for Mr Mladen Kostić has remained open since 23 July 1998[[8]](#footnote-8). Likewise, his name appears in the information sources referred to in § 52 above. The entry in relation to Mr Mladen Kostić in the online database maintained by the ICMP[[9]](#footnote-9) reads, in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.

### *Facts with regard to the killing of Mr Anđelko Kostić (case no. 230/09)*

1. Mr Anđelko Kostić was killed in his home in Retimlё/Retimlje village on 18 July 1998, during the same armed assault (see § 46 above).
2. The complainant informs the Panel that the death of Mr Anđelko Kostić was confirmed by a certificate issued by the MUP on 22 March 2000 and a death certificate issued by relevant authorities of the Republic of Serbia on 23 October 2002.

### *Facts with regard to the abduction and arbitrary detention of Mrs Angelina Kostić (case no. 111/09), Mrs Petra Kostić (case no. 178/09), Mrs Slavica Banzić (case no. 254/09), Mrs Desanka Banzić (case no. 263/09) and Mrs Dragica Božanić (case no. 284/09)*

1. On 18 July 1998, Mrs Angelina Kostić and Mrs Petra Kostić were abducted by KLA members from the Retimlё/Retimlje village, while Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanićwere abductedfrom the Opterushё/Opteruša village, during the same armed assault by the KLA. They, together with other persons, were first detained by the KLA in the monastery “Sveti Vraći” in the Zoqishtë/Zoćište village, Rahovec/Orahovac municipality, then they were transferred and later released.
2. Copies of ICRC certificates presented by the complainants indicate that on 22 July 1998 Mrs Angelina Kostić, Mrs Petra Kostić, Mrs Slavica Banzić and Mrs Desanka Banzić were “handed over to the ICRC in the region of Malisevo by armed persons who identified themselves at that time as members of the KLA”.

## The investigation

### *Disclosure of relevant files*

1. In the present case, UNMIK initially presented to the Panel only a limited number of copies of the documents in relation to the actions undertaken by the UNMIK OMPF and UNMIK Police (which were located in Kosovo). At the Panel’s request, UNMIK retrieved from the UN Archives in New York the investigative file consisting of 26 folders, which UNMIK presented to the Panel (see §§ 8 - 9 above). On 18 May 2015, UNMIK confirmed to the Panel that all available investigative documents have been provided to it.
2. On 22 July 2015, the SPRK confirmed that the entire original case file had been in their archive until 5 November 2013, when it was transferred to the EULEX WCIU.
3. The assessment below is thus based on the analysis of all materials available to the Panel, including those provided by UNMIK and the complainants, as well as those obtained by the Panel.
4. With regard to the 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. Considering that some judicial proceedings and investigations into the events connected to this case may still be ongoing, the Panel clarifies that, although its assessment of the present case stems from a thorough examination of all available documentation, only a very brief synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

### *Overview of the OMPF / MPU files in relation to the victims*

1. The file presented to the Panel contains extensive documentation related to the OMPF and MPU investigation directed towards establishing the fate of the complainants’ missing relatives. For each of them, an individual file was opened, in 2000-2002, and most of them were further joined by the MPU into bigger investigations.
2. The joined MPU investigation into the abduction of the Kostić family members from Retimё/Retimlje village, the case no. 0765/INV/04, contained 14 cases, including five victims in the current matter: 2001-001181 – Mr Todor Kostić (HRAP case no. 180/09), 2001-001260 – Mr Lazar Kostić (HRAP case no. 179/09), 2001-001261 – Mr Živko Kostić (HRAP case no. 117/09), 2002-000018 – Mr Nebojša Kostić (HRAP case no. 231/09), and 2002-000019 – Mr Mladen Kostić (HRAP case no. 232/09)
3. The investigation into the abduction of Mr Cvetko Nikolić (HRAP case no. 240/09) was registered under the nos 2002-000205 and 0284/INV/05; the one in relation to Mr Rajko Nikolić (HRAP case no. 241/09) – nos 2000-001372 and 0409/INV/05.
4. The abductions from Opterushё/Opteruša village were investigated in the joined case no. 0444/INV/05; it included at least 7 victims, among whom were three victims from the current case before the Panel: 2001-000605 – Mr Spasa Banzić (HRAP case no. 253/09), 2002-000529 – Mr Nemanja Božanić (HRAP case no. 286/09), and 2002-000594 – Mr Mladen Božanić (HRAP case no. 284/09).
5. The investigation into the abduction of Mr Aleksandar Stanojević (HRAP case no. 247/09) had a number 2000-001553, and the one in relation to Mr Duško Patrnogić (HRAP case no. 143/09) – no. 2000-001371. It is not clear whether the attack on the Rahovec/Orahovac Health Centre, during which these two persons were abducted, was investigated as a joined matter.
6. All files generally include the completed ICRC / MPU Victim Identification Forms with their ante-mortem description, information related to the finding and identification of the victims’ mortal remains, autopsy records and the identification documents and certificates. All these cases are marked as closed after the handover of the victims’ mortal remains to their respective families.
7. Since no mortal remains of Mr Mladen Kostić have been identified to date, the file in his regard contains only his ante-mortem description and brief information related to his abduction.

### *Overview of the investigation by UNMIK Police WCIU, CCIU and International Prosecutors*

1. The UNMIK Police WCIU conducted the main investigation in the case under the no. 2002-00031, opened in 2002. The below summary of the investigation covers the WCIU case no. 2002-00031 and a number of other related UNMIK Police case files. For ease of reference the information is presented in chronological order, divided by the year of action. Although the contents of the documents are presented only in brief, the Panel reviewed all documents in full.

#### 2000

1. The earliest investigative document in the file is the statement of Mrs K.B. given to the ICTY, where she described the circumstances of her and her family members’ abduction by the KLA, detention in Malishevë/Mališevo, and release.

#### 2001

*Unidentified human remains found*

1. The file contains a number of documents related to the finding of human bones at the entrance to a cave near Volljak/Volujak village, Klinё/Klina Municipality, on 3 April 2001. UNMIK Police opened a case, informed the MPU, who went to the scene, collected a number of human bones and clothing and photographed the location. However, no excavation or any other further action was undertaken at the spot. After examination, it was established that the bones were those of three individuals. Thereafter, these human bones were buried at Pejё/Peć cemetery; it appears that no DNA samples were taken at that time.

*Action with regard to the Rahovec/Orahovac abductions*

1. In July – August 2001, a number of meetings took place between the Serbian families in Hoca i Madhe/Velika Hoća and representatives of the BDMP, UNMIK Local Community Office, the ICRC and the MPU, addressing the issue of the missing persons. UNMIK authorities received a list of 65 missing persons; 40 of whom had not been reported to UNMIK before and of 64 for whom no ante-mortem details had been collected. On 9 August 2001, the ICRC, the BDMP and the MPU met with the families’ representative “to explain them WHY we need to collect information again”, and proceeded with collecting ante-mortem details of the missing.
2. On 14 August 2001, the MPU recorded the first related statement, from Mr D.K. and Mrs R. K., whose two sons had also been abducted by the KLA in July 1998. They generally described the attack and mentioned three KLA members that they recognized. One of their sons, Mr J.K., had been abducted earlier, on 11 July 1998. The KLA had offered to release him in exchange for all weapons surrendered by Serbian residents. The parents had received a letter written by their son, Mr J.K., about this, on 11 July 1998; it was delivered by three named Kosovo Albanians. They also mentioned Mr M.K., who was abducted twice by the KLA and released.
3. By the end of August 2001, ante-mortem data had been collected for 67 missing persons from Rahovec/Orahovac municipality, including all relatives of the complainants in the present case.
4. In September 2001, the BDMP met with the CCIU and agreed that all the Rahovec/Orahovac abduction cases would be submitted for further investigation to the CCIU.

#### 2002

1. In May 2002, UNMIK Police higher leadership, the MPU and CCIU reviewed the matter. In general, dissatisfaction was expressed that there were many files in the Belgrade MPU office, which contained information that could lead to criminal action, but because of lack of cooperation between the CCIU and MPU that information was not transmitted to the CCIU.
2. The documents also indicate that, in 1998, relatives of the Kostić family residing in the USA brought the matter of their relatives’ abduction to the US authorities; the US Ambassador presented all information to the SRSG at the beginning of 2002.

1. In addition, the family members requested UNMIK to arrange for their visit to Retimё/Retimlje, where they wanted “to confront the current residents about this incident”. The families were extremely dissatisfied that the visit had not been arranged and that they were not informed of any work in that regard.
2. In a memorandum addressed to UNMIK Police Chief Investigations, dated 29 May 2002, the Head of the MPU office expressed particular concern about the involvement of various people and organisations in this matter, which he considered might undermine the investigation (original grammar preserved):

“…a lot of different organisations were or are involved in this case, and none of them took a leading role in the process. A lot of information is gathered but never reached Unmik Police.

ICRC received a lot of info from the US and from the family.

D&MPB had “series of meetings with the families.

ICTY took statements.

At this point in time, again different people are “involved”, “in contact” or “liaising with”. Again I see the danger of decentralization of the information. As this is obvious a criminal case, (kidnapping and illegal detention/murder), the case should be centralized and investigated by police, in this case CCIU will follow-up by MPU for the MP aspect.”

1. In an e-mail, dated 1 June 2002, the Acting Head of the CCIU informed the OMPF of the following (original text preserved): “The incident took place on the 18th July 1998. All warcrime cases between Feb 1998 and June 11th 1999 are being investigated by ICTY. CCIU investigated the crimes that took place after 12 June 1999. Our initial inquiries with ICTY have revealed that this case is being investigated by them.”
2. Attached to this document is an e-mail, dated 1 June 2002, from an ICTY Investigation Team Leader to the CCIU investigator in charge of the case 2002-00031, which reads:

“Please be informed that the events in and around Retimlje in summer 1998 are a part of one of the investigations the ICTY – more precisely my team – is currently conducting.

Whatever information you have or get with regards to the potential perpetrators of these kidnappings, would naturally be of great value to us.

This is perhaps the first time we have any real exchange of at least some information with the CCIU, despite the fact that many of our targets are common.

As I have discussed with the UNMIK management several times earlier, it would be extremely important to improve the current situation in this respect. You may be aware that the main time period we are focusing on is Feb ’98 – June ’99…”

1. According to a number of further documents, from June 2002, a number of actions took place to verify whether the ICTY was in fact investigating the matter.
2. This part of the file ends with an undated CCIU Case Overview for the case 2002-00031. It provides an overview of the actions undertaken by the CCIU on the matter, starting from 10 May 2002. The actions included collection of background information, analysis of available documents, meetings with OMPF and MPU. The entry of 15 June 2002 states that all information and documents were passed to the ICTY Head of Mission in Kosovo. According to the page outlining the file contents, the file consisted of 115 pages (with e-mails, lists of names, background notes, memoranda etc.).
3. On 18 August 2002, the CCIU formally initiated the case no. 2002-00031, which included the names of the missing members of the Kostić and Nikolić families as victims. The qualification of the crimes to be investigated was: “Murder/Homicide, Kidnapping/Abduction, War Crimes/Mass Graves”. The field “Case Summary” reads: “This case is investigated by the ICTY and is no longer a CCIU case.”
4. The following CCIU Pending/Close Form, also dated 18 August 2002, reads: “Crime: Multiple Murders”; “File Title: Kostic case”. The field “Details” reads:

“The 17 victims from the Kostic and Nikolic family were abducted from the village of Retimlje on 18th of July 1998. They were later found killed.

 All information collected during CCIU’s participation of this investigation has been forwarded to ICTY, for the furtherance of their investigation. There is no detailed information in the CCIU database, reference to the September meeting between BDMP and CCIU. CCIU will continue to render any additional assistance in this investigation to ICTY upon request.

 I recommend that the case file currently held by the CCIU be closed due to the fact that ICTY has taken complete authority of this investigation.”

1. The same document contains an undated, handwritten and stamped approval by the Head of the CCIU and a handwritten note “No follow-up. Turned Over to ICTY The Hague”. There is no further indication in the file of the ICTY’s investigative activities in this case.

#### 2003

1. In July 2003, the Serbian MUP Joint Committee on Police Cooperation (JCPC) sent letters to UNMIK Police, with detailed information on the abductions in the Rahovec/Orahovac area, in July 1998, and requested the matter to be investigated. The first letter contained names of two survivor witnesses, around 20 eyewitnesses, descriptions of eight hijacked vehicles, and the names of around 25 individuals associated with the KLA, who took part in the attacks.
2. Later this year, UNMIK Police and the Serbian MUP exchanged a number of letters in relation to the events under investigation in Rahovec/Orahovac. The file also contains a number of case briefs, with an overview of the available information and the evidence.
3. In October 2003, the MPU inspected a site of a possible mass grave in Malishevё/Mališevo municipality, but the results were negative. The MPU requested further assistance from the Serbian MUP, which was provided. The MPU also requested the assistance of the Serbian MUP in locating and interviewing two eye-witnesses, who had also been abducted, detained and released by the KLA in July 1998. They were interviewed by UNMIK Police; they named seven other survivor witnesses and around 15 KLA members allegedly involved in the events.
4. There is an ICRC Certificate in the file, dated 23 September 2003, stating that “On 22 July 1998, Ms Petra Kostić was handed over to the ICRC in the region of Malisevo by armed persons who identified themselves at the time as members of the KLA. Later the same day, she was transferred to Pristina under the auspices of the ICRC.”

#### 2004

1. In February 2004, UNMIK Police tried to connect this investigation to the case of two brothers, Luan and Bekim Mazreku from Malishevё/Mališevo, who had been by then convicted by Serbian authorities for their participation in the commission of war crimes against the civilian population committed in July 1998 (see §§ 152 - 153 below). The Serbian Government provided UNMIK Police with copies of their statements, given to a Serbian investigative judge in Prishtinё/Priština, on 6 August 1998.
2. In May 2004, the JCPC of the Serbian MUP, again provided UNMIK Police with information about a number of incidents in July 1998, in the Rahovec/Orahovac area, which included the KLA attack, abductions and killing of Kosovo Serbian civilians and of two Kosovo Albanian civilians. The JCPC indicated that they were in possession of information as to the identities of the suspects and witnesses to the described events.
3. The last document from this year is a memorandum from the MPU to an IPP in Pejё/Peć, copied to an investigative judge, dated 15 Nov 2004. The memorandum is about exhumations in Pejё/Peć cemetery (the OMPF site code “FKT”), following a court order of 28 October 2004: 23 graves were exhumed, 20 bodies and 16 body parts were found and sent for DNA sampling and autopsies to the OMPF facility in Rahovec/Orahovac.

#### 2005

1. On 21 and 22 March 2005, OMPF and MPU conducted a site assessment of a cave near Volljak/Volujak village; some human bones were found during this assessment. In total, the bones found in 2001 (see § 80 above) and during this assessment came to a total of five or six adults and one juvenile. On 29 March 2005, OMPF and MPU conducted a site assessment of a suspected mass grave in Malishevё/Mališevo municipality (the OMPF site code “TBE-05”).
2. On 20 April 2005, an IPP issued a Request for Investigation, tasking the WCIU and the Pejё/Peć Regional Investigation Unit with collecting additional information and undertaking certain actions in relation to the exhumation in Pejё/Peć cemetery (in 2004), the exhumation in the Volljak/Volujak cave, and the KLA attack on Rahovec/Orahovac area, in July 1998.
3. A WCIU Investigation Diary for the case no. 2002-00031 in the period from 29 April 2005 to 4 July 2005 contains 33 entries reflecting various actions.
4. On 3 May 2005, a meeting was held between the WCIU, an IPP and the OMPF. A number of actions were agreed upon; the investigative team was to report to the prosecutor daily. Attached to the record is a list of 17 individuals, whose mortal remains were exhumed from Pejё/Peć cemetery (site “FKT”) and identified by then. Among them were the remains of Mr Lazar Kostić, Mr Nebojša Kostić, Mr Todor Kostić, Mr Živko Kostić, Mr Cvetko Nikolić and Mr Rajko Nikolić.
5. A number of additional e-mails, in May 2005, reflecting coordination work preparatory to the exhumations at the sites “AAK” (Volljak/Volujak cave) and “TBE-05” (Malishevё/Mališevo) are in the file. A delegation of three Serbian forensic experts came to Kosovo, to take part in the exhumations.
6. A number of e-mails between the WCIU and the IPP regarding preparation for the meeting with the families of those found in “Mališevo well” (11 people were expected to arrive from Serbia proper) are also in the file. The meeting was to take place on 21 May 2005, in the building of the Mitrovica District Court. The prosecutor planned to record statements from all of them. A display of clothes found on the mortal remains was to be arranged, but the file contains no further details.
7. A letter from the Serbian MUP JCPC to UNMIK Police, dated 30 May 2005, ref. 12a No. 303/2005, contains information in relation to three possible grave sites where the bodies of those abducted and killed during the July 1998 KLA attack on Rahovec/Orahovac area were buried (a limekiln, a place near H.Sh’s house, and a place near the school, all in Kleqkё/Klećka village, Malishevё/Mališevo municipality).
8. A WCIU Memorandum, dated 1 June 2005, is in response to the above request of the MUP JCPC, dated 30 May 2005. The WCIU reviewed their files in relation to a possible mass grave near Kleqkё/Klećka village – the site (a limekiln) was checked on 6 December 2004, but nothing was found. The WCIU also included aerial photos of relevant territory, so “[the] sources could indicate the exact sites of possible mass graves”.
9. Further in the file are a number of e-mails, dated 6-9 June 2005, from the IPP in charge of the case, with further instructions to the police, and information about the receipt of relevant investigative material from the ICTY.
10. By a letter dated 17 June 2005 the Serbian MUP JCPC provided UNMIK Police with a list of names of five former members of the KLA 122 brigade who “were involved in the kidnapping and murders of Serbian and Roman civilians in the villages of Retimlje, Opteruša and Zočište”. UNMIK Police was requested to investigate and inform the JCPC of the results.
11. By a memorandum, dated 18 June 2005, the WCIU requested the Serbian MUP JCPC to disclose to WCIU (original grammar and emphasis preserved):

“**all information** that the Serbian authorities may have with regard to this case. The families have reported the cases of their relatives that are missing both in Kosovo and Serbia and we understand that some file must exist. We require all the information that they possess, i.e.; statements, photographs etc. **I request this information as a priority as it will assist us greatly to go forward with our investigations and generate the possibility of bringing the perpetrators to justice.**”

1. According to minutes of a planning meeting between the International Prosecutor and the WCIU on the case 2002-00031, which took place on 4 July 2005, a number of further actions were agreed upon. In particular, the International Prosecutor stated that the families of those individuals found and identified at “Volujak cave” would be informed, but there was not yet any identification of the mortal remains found in the mass grave in Malishevё/Mališevo.
2. The folder further contains a criminal report to the international prosecutor filed by Mrs O.V. with the IPP at the Prizren DPPO, translated into English, regarding the kidnapping of her son. A date of translation by UNMIK DOJ interpreters, “03/09/2005”, is indicated on the document.
3. The file also contains five, undated, criminal reports, also addressed to the IPP at the Prizren DPPO, by five Kosovo Serbian individuals, relatives of people who were abducted and subsequently went missing after the July 1998 KLA attack on Serbian residents of the Rahovec/Orahovac municipality; they contain almost identical text. Among these are criminal reports of Mr Pavle Kostić and Mr Bogoljub Kostić. They all mention 14 abducted male members of the Kostić family (including Živko, Lazar, Todor, Nebojša and Mladen), Srećko and Rajko Nikolić, who had been abducted and were missing, and Mr Anđeljko Kostić, who had been killed by the KLA. The reports also mention the abduction and illegal detention by the KLA of more than 30 Kosovo Serbian civilians (including Mrs Angelina Kostić, Mrs Petra Kostić, Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić).
4. In all the criminal reports the reporting parties complain that they were (original text preserved):

“comprehensively prevented to receive any information about the destiny of the missing kidnapped persons. … irrespective of submission of charges to all competent authorities in Kosovo, there are no information whether anything was undertaken at all or not when it comes to the perpetrators of this heinous crime. Such information can be gathered *ex-officio* only [by] a body competent for prosecution of perpetrators ... , and it is possible to reconstruct a way of execution of this heinous crime, establish the identity of perpetrators and their leaders. Also, it is possible to get *ex-officio* relevant information thereof by interrogating commanding officers of the units engaged during the time when this act was committed.”

1. On 5 October 2005, an International Prosecutor in Prizren District Court, following the requirements of Articles 220 and 221 of the applicable Provisional Criminal Procedure Code of Kosovo (PCPCK), issued a Ruling on Initiation of Investigation against five major suspects, former members of the KLA who held positions of command in Rahovec/Orahovac area (PP no. PPS 459/09, CIR 2005/415/PRS, WCIU no. 2002-00031). The charges were related to organising and participating in attacks on Rahovec/Orahovac, Opterushё/Opteruša, Retimlё/Retimlje and Zoqishtë/Zoćište, in July 1998. The file, however, contains no documents indicating that any of the complainants, or other injured parties, had been informed of the initiation of the investigation.
2. From November 2005, upon an order of a Pre-Trial Judge, UNMIK Police was intercepting phone calls of three key suspects. The transcripts of the intercepts, covering the period until the end of March 2006, are present in the files, together with the required police reports to the Judge who had ordered covert measures. Apparently, no relevant information was collected from this measure, so it was discontinued.
3. In December 2005, UNMIK Police collected personal data from the UNMIK Civil Registry on 15 persons; these included information on five major suspects.
4. There is a memorandum in the folder, dated 21 December 2005, titled “Request for autopsy, ante-mortem and post-mortem reports”. The letter states “[b]etween the 17th and 21st of July 1998 the KLA attacked Orahovac, Retimlje, Opterusa and Zociste. Number of people had been abducted and detained in detention centers in Semitiste Pecane and Malisevo. The females have been released but the men have never been seen alive again.” The memorandum also requests autopsies, ante-mortem and post-mortem reports for 23 persons listed on an attached page and a request for an official list of nine persons identified by the OMPF, whose names are provided on an attached page.
5. A memorandum from the WCIU to the OMPF, dated 21 December 2005, cross-referenced to the case 2002-00031, requests official data on the identifications at the site “Volujak cave” (“AAN”). Attached to it is a chart with the names of 23 Kosovo Serbian males abducted during the KLA attack in July 1998, including Mr Živko Kostić, Mr Mladen Kostić, Mr Nebojša Kostić, Mr Todor Kostić, Mr Lazar Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić and Mr Spasoje Banzić. According to the chart, their mortal remains had by then been identified at FKT site, Pejё/Peć cemetery.

#### 2006

1. In response to a WCIU request of 21 December 2005, by a memorandum of 23 January 2006, the OMPF confirmed that the mortal remains of 21 persons found at Pejё/Peć cemetery (“FKT” site) and Volujak cave (“AAN” site) had been identified. OMPF also established that the bones exhumed at “FKT” site were previously collected at “Volujak cave” (“AAN” site), but they could not establish when it had been done; all these bones from “AAN” site were found in one body bag at “FKT” site. Among the named 21 identified persons are the names of Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić, Mr Spasoje Banzić, Mr Mladen Božanić and Mr Nemanja Božanić.
2. The file folder contains a document titled “Order for Covert Measures”, dated 14 February 2006, against three “targets”. There are several more UNMIK administrative documents regarding the intercept equipment attached to the Order. There are transcripts of numerous telephone intercepts, from 24 February 2006 till 23 March 2006, but none refer to any of the victims or incidents of 1998. The file also contains numerous telephone intercepts of another “target”, in the period from 19 November 2005 to 25 November 2005, as well as 11 intercepts from 24 March 2006 to 26 March 2006. Likewise none of the calls refer to any of the victims or incidents of 1998.
3. According to a WCIU memorandum, dated 20 February 2006, a witness Z.K. received three threatening phone calls on 2 and 3 February 2006, warning her not to testify. The phone calls allegedly came from the telephone at her parents’ house in Rahovec/Orahovac municipality. Although the investigator suggested obtaining metering records of that phone number, there is no follow up on the matter in the file.
4. The file also contains a WCIU Case Status Report, dated 24 February 2006, providing an overview of the event and actions undertaken thus far.
5. There is also an e-mail from a WCIU investigator, dated 3 March 2006, providing a list of 15 witnesses to be interviewed in Serbia proper. In response, the International Prosecutor requested to meet the police officers on 9 March 2006, to discuss the questions they wanted to put to the witnesses, as the family members were “very angry about being asked the same questions over and over.”
6. Further in the file are a number of officers’ reports. The report of 21 March 2006 names the people who participated in the negotiations for the release of Kostić and Nikolić family members: five people on the Serbian delegation, including the mayor of Rahovec/Orahovac, an ICRC representative, and the Head of the OSCE Kosovo Verification Mission (KVM); the KLA delegation was represented by three named commanders. A subsequent report, dated 27 March 2006, mentions another member of the Serbian delegation to these negotiations. A report of 10 April 2005 contains extensive information on the KLA structure, including the command, in the Rahovac/Orahovac area.
7. The file also contains an order of an International Pre-Trial Judge of the Prishtinё/Priština District Court, dated 5 April 2006, granting an extension of this investigation, for another six months. The investigation does not appear to have been extended beyond 6 October 2006, but was apparently terminated or suspended by UNMIK judicial authorities.
8. The file also contains a memorandum from the International Prosecutor to the WCIU (on the case no. 2002-00031), dated 18 April 2006, instructing him to proceed with preparatory work for interviews of eight witnesses in Serbia proper. There are a number of follow-up correspondences between them on the matter.
9. On 9 May 2006, the WCIU investigator submitted to the International Prosecutor the final list of 13 witnesses to be interviewed in Serbia proper, with explanation of the reasons for re-interviewing them. The International Prosecutor responded that she was in the process of arranging for the interviews with the Serbian police and prosecutors. In another e-mail, on the same date, the WCIU and International Prosecutor exchanged information about the request to the ICTY in relation to the release of the statements of three witnesses, which was being arranged.
10. The file further contains 32 officers’ reports covering the period from 2 June 2005 until 15 June 2006. Most of the action was related to the identification and location of Kosovo Serbian and Kosovo Albanian witnesses and arranging interviews with them. According to one of those reports, dated 11 February 2006, three Kosovo-Albanian witnesses to the events in Rahovec/Orahovac Health Centre provided information off the record, but refused to testify in court. Furthermore, according to the report of 2 March 2006, the day before the witness Z.K. had received another threatening phone call warning her not to testify; she subsequently only provided some information off the record.
11. The last document in the file for this year is a confidential memorandum from an UNMIK Legal Officer to the IPP on the case, dated 16 October 2006, providing an overview of the major relevant facts and information available to the investigators to that date.

#### 2007

1. This part of the file contains a Case Analysis Report for the case no. 2002-00031, dated 22 October 2007; it is marked there that the actual review was done on 7 Aug 2006. The reviewing UNMIK Police officer recommended to “turn the case over to WCIU to finish”.
2. The last document in the UNMIK investigative file is a WCIU Case Report on the case no. 2002-00031, which is a printout from a WCIU database, generated on 22 Nov 2007. The entry, dated 23 August 2002, in that Report reads: “This case is investigated by the ICTY and no longer a CCIU case. … the case file is closed. … CCIU will continue to render any help if required by ICTY. Case file closed on 23-08-02”.

#### 2009 and later

1. This investigative case file was transferred to EULEX, on 5 January 2009, and the investigation was supposed to continue. In particular, an EULEX international prosecutor interviewed Mr J.L., who had also been abducted by the KLA, detained, taken for execution, but managed to escape.
2. On 26 May 2010, the EULEX International Prosecutor in charge of the case ruled to terminate this investigation, because of lack of evidence.

### *Witnesses’ Statements Overview*

1. In total, there are records of interviews with 46 eye-witnesses, victims and witnesses; ICTY teams interviewed 16 of them. No one was interviewed as a suspect. The breakdown of these interviews by year is as follows:
* 2000 – two witnesses were interviewed in Serbia proper, by the ICTY and a Serbian investigating judge;
* 2001 – 13 individuals were interviewed by the ICTY during this year, including two former officers of the OSCE KVM, who worked during the summer of 1998 in Rahovec/Orahovac and Prizren regions. The other 11 interviewees were Kosovo Serbian residents of the villages attacked by the KLA in July 1998, who were eye-witnesses and survivors of the abductions and detentions;
* 2002 – during this year, one victim/eye-witness was interviewed by the ICTY; around ten potential witnesses/suspects were named;
* 2003 – two key eye-witnesses/victims of abduction and detention were interviewed by UNMIK Police, in Serbia proper; eight suspects were named;
* 2004 – no witnesses were interviewed;
* 2005 – 12 Kosovo Serbian and one Kosovo Albanian witnesses were interviewed by UNMIK Police; they described the circumstances of the attacks on the villages and the medical clinic in Rahovec/Orahovac, as well as their detention by the KLA. Many names of potential suspects, including the leaders of the attacks, were mentioned.
* 2006 – UNMIK Police located and recorded witness statements from ten Kosovo-Serbian and six Kosovo-Albanian individuals. Almost no new information was collected; the same suspects and victims were mentioned. UNMIK Police conducted the last interview in June 2006.
1. Among the available statements, there are two made by Mrs Angelina Kostić (one recorded by the ICTY on 16 August 2001 and one recorded by UNMIK Police on 10 December 2005) and one made by Mrs Petra Kostić (recorded by UNMIK Police on the same date). In her statement, Mrs Petra Kostić mentions the previous statement that she had given to the ICTY, but that earlier statement is not found in the file.
2. Both, Mrs Petra Kostić and Mrs Angelina Kostić, describe what happened during the attack on Retimlё/Retimlje village, how Mr Anđeljko Kostić was killed, how the residents were forced out of houses, how the women and men were separated and then the men were driven away by the KLA, while the women and elderly men were taken to the “Sveti Vraći” monastery at Zoçishtë/Zoćište village (half way by tractor and the rest on foot); they stayed at the monastery until 21 July 1998. The women from Opterushё/Opteruša village (including Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić) joined them on 19 July 1998. When, on 21 July 1998, the monastery was attacked and taken over by the KLA, all people who had been sheltered there by the monks, were moved to what appeared to be a KLA base at an unknown location in the area. There they were all kept in one big room in a school building that was being used as a place of detention. During their detention, they were provided with food and water but had limited access to the toilet. They were threatened with knives and guns; one woman heard that the water given to them might have been poisoned; however, there were no reported individual threats and/or physical assaults. After being detained there for one day and night, on 22 July 1998 all of the detainees were handed over to the ICRC.
3. There are also statements from other eye witnesses who describe similar treatment. They were likewise abducted and detained by the KLA during the same offensive on Serbian residents in the Rahovec/Orahovac area, and were later released or managed to escape from KLA detention. These eye witnesses describe how they were abducted, transported by the KLA (in open trucks, buses, cars, or made to walk), threatened with torture and execution, confined, on many occasions without adequate space, sanitation, fresh air, light, sleep, food and water, and were interrogated. Some witnesses were beaten themselves; some saw other detainees being beaten and tortured or saw the signs of beating and torture on others, heard others being beaten or tortured, or were told of those things happening to the detainees.
4. The file also contains an undated, unsigned, handwritten letter, apparently addressed to someone in UNMIK and KFOR, from a person who was taken by the KLA, in April 1998, together with six other people, and brought to “KLA detention center in Likovac”, where he was brutally beaten up but then released. The other six were reportedly killed; their bodies were found a few days later in Rahovec/Orahovac municipality. The author of the letter apparently knew the two other persons who were detained and maltreated with him. They all asked to be granted protected status, before testifying. No follow up on this information is in the file.

### *Other relevant criminal proceedings in Kosovo in relation to the KLA attacks in Rahovec/Orahovac municipality, in July 1998*

1. There were a number of other criminal investigations and judicial proceedings in relation to the events subject of this case before the Panel. Below is a brief overview of the other proceedings the Panel was informed of.

#### UNMIK

1. On 17 August 2004, an International Investigative Judge of the Prizren District Court issued an Order for Investigation, instructing UNMIK Police to investigate the abduction and killing of 11 Kosovo Albanian and one Kosovo Serbian (Mr Svetozar Tomić, see HRAP case no. 160/09) residents from Rahovec/Orahovac region, by a KLA group operating from Drenovc/Drenovac village, in the period from May to October 1998.
2. On 27 July 2004, the IPP filed an indictment charging Mr Selim Krasniqi and five other defendants with a number of crimes committed against detainees at a detention centre in Drenovc/Drenovac village. The allegations related to the illegal arrest, unlawful detention, beating, torture and death of Kosovo Albanian victims. In 2005, the mortal remains of some of the Kosovo Albanian victims in this case were found in the mass grave at “Volujak cave” (site code “AAK”).
3. On 10 August 2006, a trial panel of International Judges of the Prizren District Court found Selim Krasniqi and two others guilty of inhumane treatment of Kosovo Albanian detainees in the mentioned KLA detention centre.

#### EULEX

#### Kabashi et al case

1. On 30 March 2011, the SPRK filed an indictment against Mr Ejup Kabashi and others, accused of commission and providing assistance in the commission of war crimes allegedly committed against the Serbian civilian population in the village of Opterushё/Opteruša, in July 1998.
2. In August 2011, the District Court of Prizren found Mr Kabashi guilty of war crimes against the civilian population in co-perpetration and sentenced him to five years of imprisonment. Others were found guilty of providing assistance to the perpetrators after the commission of criminal offences and were sentenced to a suspended sentence of six months of imprisonment.
3. On 4 September 2012, a panel of EULEX judges at the Supreme Court ordered a retrial in the war crimes case against Mr Kabashi and others who were also found guilty. The case still awaits a retrial.

#### Klećka case

1. On 25 July 2011, the SPRK filed an indictment against 11 individuals, including some of the suspects in the UNMIK Police investigation no. 2002-00031, for the crimes allegedly committed by them and other members of the KLA from early 1999 until mid-June 1999 against Serbian and Albanian civilians and Serbian military prisoners in a KLA detention centre in Kleqkё/Klećka, Malishevё/Mališevo municipality.
2. On 2 May 2012, the District Court of Prishtinё/Priština found all accused not guilty on all counts.

#### Serbian authorities

#### Mazreku brothers case

1. The brothers Bekim and Luan Mazreku were arrested in August 1998, by Serbian authorities, a few days after a mass grave in Klećka, Malishevё/Mališevo municipality, containing the calcified remains of 22 Serbs allegedly executed by the KLA in July 1998, was discovered. The trial opened on 6 April 2000. The indictment was based on testimony from witnesses and from the accused brothers who had claimed to be members of a 20-men strong KLA firing squad that executed two children, three women and five men. There was also testimony that the women and girls were raped before they were killed.
2. After a trial which lasted a year, the five-member panel of the Prishtinё/Priština District Court, displaced in Niš, Serbia proper, on 18 April 2001, unanimously found them guilty of terrorism under Article 125 of the federal Criminal Code (CC) and, pursuant to Article 139 (2) of the CC, sentenced them both to 20 years imprisonment. Following an appeal by the defence, the Supreme Court of Serbia annulled the case and ordered a retrial. The defendants were transferred to Kosovo, along with other ethnic Albanian inmates then detained in Serbian prisons. The matter is pending a retrial.

#### Sinan Morina Case

1. On 13 July 2005, the Serbian War Crimes Prosecutor’s Office filed an indictment in the case no. KTRZ 1/07 “Orahovac Group”, against Mr Sinan Morina. He was accused of participation, on 17 and 18 July 1998 and subsequent dates, “in a sustained armed assault on the villages of the Orahovac municipality, whereby a number of Serb civilians were killed, unlawfully detained, tortured and physically injured, while members of his group committed murders and rapes … resulted in a large-scale destruction of civilian property and religious objects, which was not motivated by military necessity, and in the dislocation of civilians from the area of the Orahovac municipality.”
2. The Belgrade District Court [acquitted](http://www.b92.net/eng/news/crimes.php?yyyy=2007&mm=12&dd=20&nav_id=46322) him on 20 December 2007, due to lack of evidence. On 26 August 2009, the Supreme Court of Serbia [reversed the verdict](http://www.hlc-rdc.org/?p=13018&lang=de) and ordered a retrial.

#### ICTY

1. The research in the jurisprudence database of the ICTY did not bring to light any further information in connection to the KLA attack in Rahovec/Orahovac municipality, in July 1998, relevant to the instant complaints before the Panel.

# THE COMPLAINTS

1. Insofar as it has been declared admissible by the Panel, the complainants complain about UNMIK’s alleged failure to properly investigate the killing of Mr Anđeljko Kostić, abduction and killing of Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić, Mr Spasoje Banzić, Mr Mladen Božanić, Mr Nemanja Božanić, Mr Duško Patrnogić and Mr Aleksandar Stanojević, as well as the abduction and disappearance of Mr Mladen Kostić. In this respect the Panel deems that the complainants invoke a violation of the procedural limb of Articles 2 of the European Convention on Human Rights (ECHR).
2. The Panel also declared admissible the complaint of Mr Bogoljub Kostić about the mental pain and suffering allegedly caused to himself and his family because of the abduction and disappearance of Mr Mladen Kostić. In this regard, the Panel deems that he invokes a violation of the substantive part of Article 3 of the ECHR.
3. The complainants Mr Bogoljub Kostić, Mrs Petra Kostić, Mrs Slavica Banzić and Mrs Dragica Božanić further complain about UNMIK’s alleged failure to properly investigate their or their relatives’ illegal arbitrary detention by the KLA. In this respect, the Panel considers that these complainants invoke a violation of the right to liberty, guaranteed by Article 5 of the ECHR.

# THE LAW

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

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 authorities did not conduct an effective investigation into the killing of Mr Anđeljko Kostić, abduction and killing of Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić, Mr Spasoje Banzić, Mr Mladen Božanić, Mr Nemanja Božanić, Mr Duško Patrnogić and Mr Aleksandar Stanojević, as well as the abduction and disappearance of Mr Mladen Kostić.

### *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 for the first time 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.
3. 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.
4. 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.
5. 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 § 163). 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.
6. 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 killing, abduction and killing, and abduction and disappearance of their close relatives. The complainants further allege that they were not properly informed as to whether an investigation was conducted and what the outcome was.
2. The SRSG provided comments on the merits of the complaints under the Panel’s examination on two occasions: on 16 August 2013 – only with regard to the complaints of Mrs Živanka Patrnogić (no. 143/09) and Mrs Vesna Vojinović (no. 247/09), and on 7 July 2014 – in relation to all complaints in joined the current matter.
3. In relation to all complaints, the SRSG notes at the outset, that the disappearances and killings of the complainants’ relatives happened in July 1998, at a time when many Kosovo Serbian individuals were forcibly taken away or disappeared in the Rahovec/Orahovac area, due to “concerted activities and/or operations targeting Kosovo Serb population … carried out by Kosovo Albanian individuals … members of the KLA”. The relevant investigative files obtained by UNMIK contain not only information in relation to the complainants’ relatives, but also include information in relation to other individuals that were abducted in the course of the mentioned KLA operations in that area, in July 1998.
4. Commenting on the common issues related to all complaints in this case, the SRSG stated that UNMIK does not dispute its responsibility to conduct an investigation into the abduction and killing of Mr Živko Kostić, Mr Duško Patrnogić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić, Mr Aleksandar Stanojević, Mr Spasoje Banzić, Mr Mladen Božanić and Mr Nemanja Božanić, as well as into the abduction and disappearance of Mr Mladen Kostić and the killing of Mr Anđelko Kostić, under Article 2 of the ECHR, procedural part. The SRSG accepts that all of them can be considered to have occurred in life-threatening circumstances.
5. In the SRSG’s words, “the essential purpose of such investigation is 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.”
6. In this regard, the SRSG stresses that this responsibility stems from the procedural obligation under Article 2 of the ECHR to conduct an effective investigation where death occurs in suspicious circumstances not imputable to State agents. 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. The SRSG adds that the success of every particular investigation depends on the circumstances.
7. The SRSG underlines that “from May 1998 until the deployment of UNMIK and KFOR in June 1999, the security situation in Kosovo was extremely tense, and there was a high level of violence all over Kosovo, due to the on-going armed conflict”. Soon after the establishment of UNMIK in June 1999, the security situation remained tense. KFOR “was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.” Citing the UN Secretary-General’s report to the United Nations Security Council in 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. 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. … 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, UNMIK faced a very similar situation in Kosovo from 1999 to 2008 as that in Bosnia and Herzegovina from 1995. The SRSG adds that, in 2002, the “UNMIK OMPF estimated the number of missing as 5602 [while] by August 2008, OMPF reported the total number of missing as 1938.” Many of the persons who went missing were abducted, killed, and buried in unmarked graves inside or outside Kosovo, which made it very difficult locating and recovering their mortal remains.
2. The SRSG states that in June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing. However its work was faced with many challenges at the beginning of the operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština.
3. The SRSG continues in this regard that: “Even more serious that the shortfall of the forensic standards was the lack of attention paid to the humanitarian agenda of identifying bodies and restituting their remains […]. In a focused effort to demonstrate that crimes were systematic and widespread, ICTY and its gratis teams autopsied as many bodies as possible with little or no identification work. ICTY reports that it exhumed 4019 bodies in 1999 and 2000, less than half of which were identified; furthermore, some of the unidentified bodies exhumed in 1999 by gratis teams were reburied in locations still unknown to 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.”
5. 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 [ICMP], the [ICRC] and local missing persons organisations.” This process is “still on-going, as lead by EULEX and the local authorities.”
6. 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 in 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 a 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 culture, with limited support from the still developing Kosovo Police.
2. He underlines 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 an institution such as UNMIK Police” to conduct all investigations in a manner that may be demonstrated or at least expected in other States with more established institutions, which don’t have to deal with the surge in cases of such a nature associated with a post-conflict situation.
3. With regard to the particular complaints of Mrs Patrnogić and Mrs Vojinović, the SRSG states that the mortal remains of Mr Duško Patrnogić and Mr Aleksandar Stanojević were found in 2005, in a mass grave in Malishevё/Mališevo municipality, identified and returned to the families, in 2005 and 2006 respectively. Thus, according to the SRSG, UNMIK fulfilled its obligation to establish their fate through investigation.
4. In relation to the investigation towards the identification of the perpetrators, the SRSG provides an overview of the limited investigative documents available to UNMIK “which – presumably – was to serve as a basis for the international prosecutor to initiate further action.” The SRSG concludes that the available documents confirm that substantive investigative work was carried out by UNMIK in relation to the disappearance and death of Mr Duško Patrnogić and Mr Aleksandar Stanojević. Thus, in the SRSG’s view, there was no violation of Article 2 of the ECHR by UNMIK.
5. As at the time when these comments were presented, the investigative file obtained by UNMIK was incomplete, the SRSG asserted that there was a “possibility that additional and more conclusive information exists in this complex matter”. Therefore, UNMIK reserved its right to make further comments on the joined matter, related to all victims, which were provided on 7 July 2014 (see § 168 above).
6. In his comments of 7 July 2014, the SRSG does not dispute the description of the situation and the circumstances of the killing of Mr Anđelko Kostić, and the abduction of the other victims, nor the reporting of this matter to the authorities, including those under UNMIK control, after June 1999, as described above.
7. The SRSG refers to the fact that the mortal remains of all abducted victims were located in a mass grave at Volljak/Volujak village, Klinё/Klina municipality, in November 2004, except for the mortal remains of Mr Duško Patrnogić and Mr Aleksandar Stanojević, which were located in Malishevё/Mališevo, and of Mr Mladen Kostić, who remains unaccounted for. Further, the SRSG provides an individual overview of the factual circumstances of the killing of Mr Anđelko Kostić and the abduction of the others (except for Mr Duško Patrnogić and Mr Aleksandar Stanojević).
8. To determine whether UNMIK completely fulfilled its procedural obligations under Article 2 of the ECHR, the SRSG reviews the available investigative documents. He generally notes that those “indicate that extensive investigations were conducted into 17-18 July 1998 abductions and killings in the villages of Opterushё/Opteruša and Retimlje/Retimljё by the [ICTY] and the UNMIK Police [WCIU] … Case Nr. 2002-00031.”
9. Further, referring to some of the investigative documents, the SRSG provides a brief overview of the actions undertaken by UNMIK Police and the ICTY. The SRSG states that the available documents indicate that UNMIK “complied with its obligation to open and pursue a police investigation where relevant information was available”. He further notes that “investigative action into the events of 17-18 July 1998 in the villages of Opterushë/Opteruša and Retimlë/Retimlje, was taken by the ICTY and the UNMIK Police [WCIU]. It is also clear from the file that concentrated investigative attention was given by UNMIK to identifying perpetrators of the abductions and killings which occurred in Opterushë/Opteruša and Retimlë/Retimlje at least by November 17, 2005 [when UNMIK International Prosecutor, in an e-mail] outlin[ed] the names of primary and secondary witnesses who were scheduled to be interviewed in relation to the matter.”
10. The SRSG continues that numerous witnesses were interviewed by the ICTY and the WCIU, who made several trips to Serbia proper for that purpose, and that “[a]ll investigative leads were pursued and followed up where possible. As a result, lists of suspects involved in the events of 17-18 July 1998 … were compiled. It appears, however, that the investigative information gathered could not lead to the formal conviction of the perpetrators. Further, in the period under review by the HRAP, no witnesses with more conclusive information came forward and no further substantial evidence could be discovered by the investigators.”
11. In this respect, the SRSG recalls the judgment of the European Court in the case *Brecknell v. United Kingdom*, “which confirms that upon the conduct of investigations there is no absolute right to obtain a conviction, the fact that an investigation ends without concrete or only limited results is not indicative of any failings as such since the obligation is one of means only and not of results.”
12. The SRSG further notes that none of the complainants dispute the legitimacy of the ICTY, nor do they raise any issues related specifically to deficiencies in the investigation conducted, where “several of the Complainants participated by providing statements related to the events of 17-18 July 1998 … which led to the compilation of the lists of suspects, afforded a sufficient element of public scrutiny, including being accessible to the victim’s family. There was also no substantial period of inactivity within the period *ratione temporis* of the HRAP.”
13. Therefore, to the SRSG “it is unclear in what respect the Complainants may therefore continue to assert that their human rights under the procedural limb of Article 2 ECHR have been violated.
14. Based on the above, the SRSG asserts that sufficient substantial investigation was conducted by UNMIK in relation to this matter. Therefore, according to the SRSG, there had been no violation of the procedural requirements of Article 2 of the ECHR.
15. Again, the SRSG stressed that he might submit further comments, “[a]s there is a possibility that additional and conclusive information exists” on this matter. However, to date, no further comments were received.

### *The Panel’s assessment*

#### Submission of relevant files

1. At the Panel’s requests, the SRSG provided copies of the documents related to the investigations subject of the present complaints, which UNMIK was able to recover. Additional files were received from the UN Archives in New York (see §§ 8 and 9 above). On 18 May 2015, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 13 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 complaints. 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 investigation to their handing over, is crucial to the continuation of such investigations and could thus raise *per se* issues under Article 2 (see Human Rights Advisory Panel [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 files, but 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 complaints on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of 15 March 2011, § 146).

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

1. The Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights *Velásquez-Rodríguez* (see Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The positive obligation has also been stated by the HRC as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Article 2(3) (right to an effective remedy) of the ICCPR (see 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 (A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.
2. In order to address the complainants’ allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
3. The European Court has also stated that the procedural obligation to provide some form of effective official investigation exists also when an individual has gone missing in life-threatening circumstances and is not confined to cases where it is apparent that the disappearance was caused by an agent of the State (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 166 above, at § 136; ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
4. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310; see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210; ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).
5. Setting out the standards of an effective investigation, the Court has stated that besides being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC]*, Varnava and Others v. Turkey*, cited in § 102 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312; and *Isayeva v. Russia*, cited above, at § 212).
6. At the same time, the Court considers that not every investigation should necessarily be successful nor come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, possibly, the punishment of those responsible (see ECtHR, *Mahmut Kaya v. Turkey*, no. 22535/93, judgment of 28 March 2000, § 124, ECHR 2000-III; see also ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 71, ECHR 2002-II).
7. 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 § 201 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 Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see ECtHR [GC], *El-Masri v. “the former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 202 above, at § 322).
8. 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*, cited above, § 72; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 202 above, at § 323). Furthermore, in the Court’s view, the State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice and that requires a prompt examination of the case without unnecessary delays (see ECtHR [GC], *Šilih v. Slovenia*, no. 71463/01, judgment of 9 April 2009, § 195; ECtHR, *Byrzykowski v. Poland*, no. 11562/05, judgment of 27 June 2006, §§ 86 and 94 - 118).
9. 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 § 136 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 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, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 above, at § 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 in § 204 above, at § 64).
10. 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 § 203 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 203 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 § 202 above, at § 324).
11. The Panel also notes that situations relating to the right to life may include not only killings and enforced disappearances, but also those of arbitrary detentions, which present real threat of killing or disappearance. The HRC states in this respect that “The right to life guaranteed by article 6 of the Covenant, including the right to protection of life under article 6, paragraph 1, may overlap with the right to security of person guaranteed by article 9, paragraph 1. … Extreme forms of arbitrary detention that are themselves life-threatening violate the rights to personal liberty and personal security as well as the right to protection of life, in particular enforced disappearances” (HRC, General Comment No. 35, *Article 9 (Liberty and security of person)*, 16 December 2014, UN Document CCPR/C/GC/35, § 56).
12. The European 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 (see ECtHR [GC], *El-Masri,* cited in § 206 above, at § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also HRC, *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives, UN Document A/HRC/22/52, 1 March 2013, § 23-26).
13. The Panel recalls that the abductions, detentions, disappearances and killings in this case took place during a Non-International Armed Conflict (NIAC) in Kosovo. In this respect, the Panel is conscious that there is another relevant body of international law, the International Humanitarian Law (IHL).
14. In the Panel’s view, IHL and international human rights law are complementary; both strive to protect the lives, health and dignity of individuals, albeit from a different perspective. Nevertheless, the Panel’s jurisdiction is determined by the international instruments listed in UNMIK Regulation 2006/12 of 23 March 2006 on the establishment of the Human Rights Advisory Panel to assess alleged violations of human rights.

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

1. The Panel is conscious of the fact that the killing of Mr Anđeljko Kostić, abduction and killing of Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić, Mr Spasoje Banzić, Mr Mladen Božanić, Mr Nemanja Božanić, Mr Duško Patrnogić and Mr Aleksandar Stanojević, as well as the abduction and disappearance of Mr Mladen Kostić, took place a year prior to the deployment of UNMIK in Kosovo.
2. For his part, the SRSG does not contest that, according to the procedural obligation under Article 2 of the ECHR, UNMIK had a duty to investigate the alleged crimes, from the moment UNMIK took over the investigative responsibilities in Kosovo (see § 170 above). The SRSG stresses in this respect that 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 the SRSG’s arguments raise two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, secondly, 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 on 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 § 204 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 § 209 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 § 203 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 203 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 occur 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” (ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at § 164; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 201 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, at §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited in § 203 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos 57941/00 and others, judgment of 26 July 2007, §§ 158-165).

1. Similarly, the HRC has held that the right to life, including its procedural guarantees, shall be considered as the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (see HRC, General Comment No. 6, cited in § 200 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).
2. 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, 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 § 24 above).
3. 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 § 204 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
4. However, the Panel considers that, in the context of most serious crimes committed against civilian populations, Article 2 requires that the authorities take all investigative efforts in order to establish the facts and bring perpetrators to justice. Such cases shall be given the highest priority.
5. 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 therefore determines 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.
6. In 2006, in its concluding observations on the report submitted by UNMIK on the human rights situation in Kosovo since June 1999 (cited in § 220 above), the HRC stated:

“The Committee, while acknowledging the work done by the Office of Missing Persons and Forensics, is concerned that some 1,713 ethnic Albanians and 683 non-Albanians, including Serbs, Roma, Ashkali and Egyptians, continued to be reported as missing as of May 2006, that low priority has been given to investigations of disappearances and abductions by the Missing Persons Unit of the UNMIK police and, since 2003, by the Central Criminal Investigative Unit, and that in closed cases of disappearances and abductions perpetrators were rarely, if ever, prosecuted and brought to justice” (emphasis added).

1. Accordingly, the HRC recommended: “UNMIK, in cooperation with PISG, should effectively investigate all outstanding cases of disappearances and abductions and bring perpetrators to justice. It should ensure that the relatives of disappeared and abducted persons have access to information about the fate of the victims, as well as to adequate compensation” (*ibid*.)
2. 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 § 208 above, at § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover between the investigators and/or investigative units. 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

1. Turning to the circumstances of the present case, the Panel recalls that the victims in this case were killed, abducted and disappeared or killed thereafter in July 1998, more than a year prior to the deployment of UNMIK in Kosovo. Thus, until 11 June 1999, it was for the Yugoslav and Serbian authorities to investigate this matter, while after that time the responsibility to conduct this investigation was assumed by UNMIK. This is not disputed by the SRSG (see §§ 170 - 171 above). The Panel observes that such position is in conformity with the generally recognised principles of IHL with respect to investigation of war crimes and prosecution of those responsible for them (see § 212 above).
2. The Panel also recalls that, according to the 2000 Annual Report of UNMIK Police, by 27 October 1999, the complete executive policing powers in the field of law enforcement in Prizren region, including the system of criminal investigation, had been transferred from KFOR to UNMIK Police. In this respect, the Panel also recalls that in October 2001, UNMIK was made aware of the disappearances of all the victims, except for that of Mr Aleksandar Stanojević, by the ICRC (see §§ 52, 57 and 62 above). The individual investigations with regard to the missing victims were initiated by UNMIK Police (MPU) in 2000 - 2002 (see §§ 71 - 76 above), while a joint investigation in relation to all of them was opened by the CCIU, in 2002 (see §§ 78 and 93 above).
3. The purpose of this investigation was to establish the fate of missing victims and to identify the possible perpetrators of all alleged crimes. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
4. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim’s family. The investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation’s effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 204 - 207 above).
5. Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
6. Having noted the SRSG’s assertion that the file submitted to the Panel may be incomplete, and the lack of further explanation in relation to this (see §§ 67, 185, 195, 196 and 199 above), the Panel assumes that UNMIK cannot guarantee whether the file presented to the Panel is complete or not. In case it is not complete, it would indicate that one of the following situations may have occurred: no proper investigation was carried out; the file was not accurately and fully handed over to EULEX; or UNMIK failed to retrieve the complete file from the current custodian.
7. The Panel notes the especially important fact related to this particular case, that EULEX did not provide the entire case file to UNMIK, although it received it from UNMIK, in January 2009 (see § 136 above), and it was in the archive of the SPRK until November 2013 (see § 68 above). Nevertheless, a copy of the entire file was returned to UNMIK from the archives at the UN Headquarters in New York (see §§ 8 and 9 above).
8. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the complete investigative file for its review (see § 199 above). However, the Panel is concerned that UNMIK was not able to confirm whether the investigative file which was provided to the Panel is complete. The Panel considers this to be particularly indicative of a possible general failure to comply with the obligation to ensure the proper handover and tracking of the investigative material.
9. Further, the Panel recalls that, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 166 above), 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 § 204 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. The Panel now turns to the assessment of this particular investigation against the first part of the procedural obligation under Article 2 of the ECHR, which is establishing the fate of the victims who were abducted and subsequently disappeared.
11. The Panel notes that UNMIK Police undertook the necessary action following the report of the disappearances of the victims. In particular, as mentioned above, individual investigations were opened and the necessary ante-mortem information collected. The mortal remains of all of them, except for those of Mr Mladen Kostić (case no. 232/09), were located, in 2005, identified and returned to their respective families, in 2006 and 2007. Given the circumstances of the case and the scale of the investigation, this delay in identification cannot be considered to be an undue one and such to have prejudiced the investigation and its ability to bring perpetrators to justice (see HRAP, *Zdravković*, no 46/08, opinion of 25 February 2013, § 122).
12. The Panel, however, recalls that the mortal remains of the victims could have been identified much earlier, in fact after some human remains were found at the entrance to the cave near Volljak/Volujak village, Klinё/Klina Municipality, on 3 April 2001 (see § 80 above). As also noted above (§§ 103 - 107), that place became a major excavation site “AAK”, where many human remains, including those of Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić, Mr Spasoje Banzić, Mr Mladen Božanić and Mr Nemanja Božanić, were found. However, as no DNA samples were taken from those remains in 2001, the DNA identification was delayed, for a number of years. Likewise, it is not clear why no proper exhumation took place at that place in 2001.

1. The Panel has already stated on a number of occasions that location and identification of the mortal remains of a missing person is in itself an important achievement. Nevertheless, the Panel has also stressed that the procedural obligation under Article 2 did not come to an end with the discovery of the mortal remains, especially when they were found in illegal mass graves (see e.g. HRAP, *Grujić*, no. 287/09, opinion of 19 March 2015, § 96).
2. From the moment the mortal remains are identified, the investigative authority receives additional information related to the identified mortal remains (probable time and cause of death, place where the mortal remains were found, items found with them etc.). It is therefore for the authorities to properly utilise this for the construction of new or correction of the previously formed investigative versions, in order to further direct the investigation towards establishing the truth as to the circumstances leading to an individual’s death. Thus, in the Panel’s opinion, the assessment of the post-identification investigative action contributes towards the overall assessment of the effectiveness of the investigation.
3. The Panel will now examine the investigation carried out by UNMIK Police with the aim of identification of perpetrators of the killing, abductions and killings, as well as abductions and disappearances of the victims in this case and bringing them to justice, that is the second element of the procedural obligation under Article 2 of the ECHR.

1. It has already been noted that the individual investigations into the killing, abductions and disappearances of the complainants’ close relatives were initiated by UNMIK Police after UNMIK was deployed in Kosovo, on various dates in 2000 – 2002, at least two years after the KLA attacks in Rahovec/Orahovac (see §§ 71 - 76 above). Also in 2001, human remains were found near at “Volujak cave”, but no DNA identification was performed on them and UNMIK Police did not link them to the cases of the persons missing after the July 1998 offensive (see § 80 above).
2. During 2001, there was some sporadic investigative action in relation to some victims, but the actions of UNMIK authorities were primarily limited to meetings with the families of the missing persons, collecting preliminary information on the events of July 1998 in Rahovec/Orahovac municipality and the information on the victims’ identity (see §§ 81 - 84 above).
3. The comprehensive joint investigation by the CCIU, covering all alleged crimes committed during the July 1998 KLA offensive, was opened towards the end of 2002 (see §§ 78 and 93 above). The file also shows that UNMIK Police discontinued its investigation into this matter at that time, as they were informed about the ICTY investigation into the matter.

1. **At the outset, the Panel stresses that it does not dispute the ICTY’s overall primacy jurisdiction to investigate any crime within its jurisdiction committed in the territory of the former Yugoslavia, due to its recognised international status under the UN Security Council’s Resolution 827 (1993).** However, in the Panel’s view, there should be a confirmation of the existence of such an investigation (see HRAP, *Bulatović*, no. 275/09, opinion of 22 April 2015, § 137).
2. In this respect, the Panel recalls that, shortly after the establishment of UNMIK, while commenting on the investigation of the alleged crimes in Kosovo, the ICTY Prosecutor clearly stated that the ICTY had “neither the mandate, nor the resources, to function as the primary investigative and prosecutorial agency for all criminal acts committed on the territory of Kosovo”. In the same statement, she reiterated that “the judicial authorities in Kosovo have the competence to judge those accused of crimes of the sort that come within the jurisdiction of the International Tribunal. In appropriate cases, which must be determined on a case by case basis, it is open to the International Tribunal to request national courts to defer to its competence, in accordance with the Statute of the Tribunal and its Rules of Procedure and Evidence [RoP].”[[10]](#footnote-10)
3. In the Panel’s view, the “primacy” of the ICTY’s jurisdiction is not absolute. Indeed, Rules 8 - 10 of the ICTY’s RoP set forth the conditions for its right to take over investigations and establish the formal procedures to be followed. Rule 8 of the ICTY RoP states: “Where it appears to the Prosecutor that a crime within the jurisdiction of the Tribunal is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, the Prosecutor may request the State to forward all relevant information in that respect, and the State shall transmit such information to the Prosecutor forthwith in accordance with Article 29 of the Statute.” Rules 9 and 10 clarify that when the conditions are met, upon the Prosecutor’s request, the responsible Trial Chamber may formally request the relevant national court to defer such proceedings to the competence of the Tribunal.
4. The Panel acknowledges that, although a formal request for deferral of proceedings to the ICTY is not present in the file, there is sufficient evidence indicating that ICTY investigators contacted UNMIK Police, informing them of an ICTY ongoing investigation and requesting all available investigative material to be transferred to the ICTY. UNMIK complied with this request and subsequently the CCIU suspended the investigation, in 2002, after the files had been transferred to the ICTY (see § 89 - 95 above).
5. However, regrettably, it is not clear to the Panel when and how UNMIK authorities were informed that the ICTY was no longer “interested” in this investigation. In any event, the only ICTY proceedings, which included alleged crimes occurring in the same time period and in a location close to Rahovec/Orahovac (ICTY, *Limaj et al*, no. IT-03-66) appeared to have no connection to the July 1998 KLA attack in Rahovec/Orahovac.
6. At the same time, some work on this case was undertaken by various organisations, but without any coordination and centralisation of the collected information. As assessed by an UNMIK Police Chief Investigations, in 2002: “a lot of different organisations were or are involved in this case, and none of them took a leading role in the process. A lot of information is gathered but never reached Unmik Police”. He also pointed out that: “At this point in time, again different people are ‘involved’, ‘in contact’ or ‘liaising with’. Again I see the danger of decentralization of the information. As this is obvious a criminal case, (kidnapping and illegal detention/murder), the case should be centralized and investigated by police…” (see § 88 above).
7. As a result of such non-systematic work, the file contains many assessments, case reviews, compilations of information, lists of victims and suspects, as well as analysis prepared at different times by different organisations, in most cases providing duplicate information. One of the negative outcomes of such approach to the work was that some witnesses (not complainants) had given multiple statements to different organisations and by 2006 they were already “very angry about being asked the same questions over and over” (see § 127 above).
8. In any event, the active phase of investigation in relation to the current matter started in October 2004, with an exhumation at the “FKT” site (Pejё/Peć cemetery) and at the beginning of 2005, with the preparatory works for exhumations at the sites “AAK” (“Volujak cave”) and “TBE-05” (Malishevё/Mališevo).
9. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that, after that critical date, UNMIK authorities obviously resumed investigating. Subsequently, as detailed above, very scrupulous investigation was carried out by UNMIK Police, under supervision of an International Prosecutor. The Panel also notes a sufficient level of coordination between UNMIK Police and the Serbian authorities with regard to locating the mass graves, exhumations, identification, returns of the mortal remains, locating and interviewing witnesses, and exchanging relevant judicial information. Unfortunately, only some coordination between UNMIK and the ICTY transpires from the file.
10. However, the Panel notes that, thanks to numerous efforts undertaken, serious progress was made in collection of evidence to substantiate allegations against the main suspects. Nevertheless, the investigation abruptly ceased without any indication in the file as to the reasons for this. The last substantive action (a witness interview) was undertaken in June 2006 (see § 138 above). In turn, UNMIK did not present any explanation as to why this investigation was discontinued. Two and a half years of this inaction falls within the Panel’s jurisdiction *ratione temporis*.
11. Thus, in the Panel’s view, the UNMIK investigative authorities failed to undertake all reasonable steps to follow obvious lines of enquiry and secure the evidence related to the killing, abductions and killings, abductions and disappearances of the victims in this case, contrary to the procedural requirements of Article 2 of the ECHR.
12. In 2006 and 2007, the case was reviewed by UNMIK Police, and a clear recommendation to “turn the case over to WCIU to finish” was made. Nevertheless, no further investigative action is in the file, although there were obvious ways of pursuing the investigation and obtaining additional evidence. Thus, the review of this investigative file can also not be considered adequate.
13. The file has no indication that the complainants were made aware of such a decision, if it was ever taken. Such a notification would have enabled them to continue with a subsidiary prosecution, should they have wished to do so.
14. The Panel also notes that the criminal investigation was officially initiated by a Ruling of an IPP, on 5 October 2005 (see § 118 above), and extended on 5 April 2006 for another six months (see § 129 above), but none of the complainants had been officially informed of that. Furthermore, the Panel notes with concern that the file contains no decision of an UNMIK IPP to terminate the investigation (see *ibid*.), as it was required under Article 224(1) of the PCPCK. There likewise is no indication that the complainants, or the family of other victims, were made aware of such a decision, if it was taken. Such a notification is required under Articles 224(2) and 62(1) of the PCPCK. Furthermore, in accordance with Article 62(2) of the PCPCK, such a notification would have enabled them to undertake a subsidiary prosecution, should they have wished to do so.
15. As the Panel has mentioned before in the case *Mladenović,* “[i]t is generally accepted in the law, that a ‘subsidiary’ prosecutor has, in principle, the same procedural rights as the public prosecutor, except those that are vested in the public prosecutor as an official authority. On a number of occasions, the European Court of Human Rights has given its opinions in cases where aggrieved parties had undertaken and conducted proceedings as subsidiary prosecutors, thus recognising this practice as an important element in the system of administration of justice … In the situation of this particular case, such an important tool for safeguarding the interests of the injured parties in the criminal proceedings was not made available to the complainants” (HRAP, *Mladenović*, 99/09, opinion of 26 June 2014, § 188). In this case, too, the rules of criminal procedure were not followed, to the great detriment of the injured parties and UNMIK provided no plausible explanation of this failure.
16. It is especially important in the view of the scale and the gravity of the alleged crimes. The Panel fears that such inaction indicates reluctance on the part of UNMIK to pursue the investigations where there was clear evidence of grave crimes committed by the KLA (see HRAP, *Janković*, no. 249/09, opinion of 16 October 2014, § 108; HRAP, *Nikolić et al*, nos 72/09 et al, opinion of 14 December 2014, § 203).
17. Having regard to all the circumstances of the particular case, the Panel considers that, not all reasonable steps were taken by UNMIK towards bringing the alleged perpetrators to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of effectiveness (see § 204 above), as required by Article 2 of the ECHR.
18. The apparent lack of an **immediate and** cohesive reaction from UNMIK may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently. Certainly, in the Panel’s view, such inaction did not help UNMIK to defuse the “[t]empers and tensions … running high amongst all ethnic groups, exacerbated by reports of missing and dead persons”, mentioned by the SRSG (see § 180 above).
19. 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.
20. However, according to the file in the Panel’s possession, only Mrs Angelina Kostić and Mrs Petra Kostić were interviewed in the course of the investigation (see § 139 above). No further contact between UNMIK authorities with the complainants and their families, except probably for the handover of the mortal remains of their relatives, is reflected in the file. The complainants commonly state that none of them were informed of the progress and the status of the investigation. The available investigative documents likewise reflect no action of UNMIK authorities in this respect. Moreover, in their criminal reports to International Prosecutors, the complainants Mr Pavle Kostić and Mr Bogoljub Kostić expressed their dissatisfaction with the accessibility of the investigation to the families (see §§ 116 and 117 above).
21. Therefore, the Panel concludes that UNMIK failed to ensure that the complainants and their families were involved in the investigative process to the extent necessary to safeguard their legitimate interests. Thus, the Panel considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR (see, *a contrario*, ECtHR [GC], *Mustafa Tunç and Fecire Tunç v. Turkey*, no. 24014/05, judgment of 14 April 2015, §§ 210 - 216).
22. The Panel is also aware of a frequently reported problem in Kosovo related to the lack of protection of witnesses from threats or intimidation, “which has been, and remains, one of the greatest challenges for justice authorities”[[11]](#footnote-11). Some observers note that the “[w]itnesses, who in many cases are crucial to linking defendants to the crimes for which they are accused, are becoming more reluctant to testify before institutions, be it police, prosecutors and/or judges in courts”[[12]](#footnote-12). In this particular case, there is evidence that at least one survivor had been threatened on the phone a number of times; other witnesses were ready to testify if they were provided protection (see §§ 125 and 132 above). However, there is no indication in the file as to any action undertaken by UNMIK authorities to protect those witnesses.
23. In light of the shortcomings and deficiencies in the investigation described above, the Panel considers that this matter, 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 § 227 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 220 above, at § 11.4, and ECtHR, *Aslakhanova and Others v. Russia*, cited in § 208 above § 123; HRAP, *Bulatović*, no 275/09, opinion of 22 April 2015 §§ 85 and 101).
24. Therefore, the Panel concludes that UNMIK failed to carry out an effective investigation into the killing of Mr Anđeljko Kostić, abduction and killing of Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić, Mr Spasoje Banzić, Mr Mladen Božanić, Mr Nemanja Božanić, Mr Duško Patrnogić and Mr Aleksandar Stanojević, as well as the abduction and disappearance of Mr Mladen Kostić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.

## Alleged violation of Article 3 of the ECHR

1. The Panel considers that the complainant of Mr Bogoljub Kostić invokes, in substance, a violation of the right to be free from inhumane or degrading treatment arising out of the disappearance of his father, Mr Mladen Kostić, as guaranteed by Article 3 of the ECHR.

### *The scope of the Panel’s review*

1. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 163 - 166 above).
2. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, “the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 219 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 204 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41). “It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct” (see, among others, ECtHR, *Er and Others v. Turkey*, no. 23016/04, judgment of 31 July 2012, § 94).
3. Lastly, where mental suffering caused by the authorities’ reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, §§ 147 - 148).

### *The Parties’ submissions*

1. Mr Bogoljub Kostić alleges that the lack of information and certainty surrounding the abduction and disappearance of Mr Mladen Kostić, particularly because of UNMIK’s failure to properly investigate it, caused mental suffering to himself and his family.
2. Commenting on this part of the complaint, the SRSG accepts that situations of relatives of disappeared and missing persons “may disclose inhumane and degrading treatment contrary to Article 3, ECHR”, which lies in the authorities’ reactions and attitudes to the situation when it was brought to their attention.
3. Nevertheless, the SRSG rejects the allegations put forward by Mr Bogoljub Kostić. He particularly stresses that there is no express allegation that this mental pain and anguish was a result of UNMIK’s response to his father’s abduction and subsequent disappearance. The SRSG stresses that UNMIK efforts to locate and identify mortal remains led to the opening of an individual investigation by the MPU (case no. 2002-000019), and its further investigation by the CCIU in the joint case in relation to all crimes allegedly committed by the KLA during its offensive in the Rahovec/Orahovac area, in July 1998 (case no. 2002-00031).
4. The SRSG further states that, although the fate of Mr Mladen Kostić has remained unknown, there is no allegation that Mr Bogoljub Kostić was unaware of investigations conducted by the ICTY and UNMIK Police into the abductions and killings of 17-18 July 1998 in the villages Opterushё/Opteruša and Retimё/Retimlje. Likewise, he should have been aware of the conduct of witness interviews with his mother, Mrs Angelina Kostić, by the ICTY and UNMIK Police, in 2001 and 2005 respectively.
5. The SRSG asserts that the complainant does not allege “any bad faith on the part of UNMIK Police involved with the matter, nor of any attitude by UNMIK Police that would have evidenced any disregard for the seriousness of the matter or the emotions of [Mr Bogoljub Kostić] emanating from the continued unresolved status of his father.” In this context, the SRSG stresses that “the understandable and apparent mental anguish and suffering of [Mr Bogoljub Kostić] based on the abduction and disappearance of his father cannot be attributed to UNMIK, but is rather a result of the inherent suffering that results from the disappearance of a close family member and an unfortunate that to date, despite efforts, the authorities have been unable to determine [his] whereabouts”.
6. Therefore, according to the SRSG, as the suffering of Mr Bogoljub Kostić and his family was not “distinct from the emotional distress … inevitably caused to the relatives of a victim of a serious human rights violation”, UNMIK cannot be held responsible for a violation of Article 3 of the ECHR.

### *The Panel’s assessment*

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

1. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
2. Setting out the general principles applicable to situations where violations of the obligation under Article 3 of the ECHR are alleged, the Panel notes that the phenomenon of disappearance constitutes a complex form of human rights violation that must be understood and confronted in an integral fashion (see IACtHR, *Velásquez-Rodríguez v. Honduras*, cited in § 200 above, at § 150).
3. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died.
4. The HRC has also recognised disappearances as a serious violation of human rights. In its decision of 21 July 1983, in the case *Quinteros v. Urugay*, it stated that disappearances constitute serious violations of the rights of the disappeared person’s relatives, who suffer from deep anguish which persists for as long as the uncertainty concerning the fate of their loved one continues, often for many years (see HRC, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990), § 14). Moreover, in its decision of 15 July 1994 in the case *Mojica v. Dominican Republic*, the HRC has deemed that “the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 [of the Covenant]”, also prohibiting torture, inhumane or degrading treatment and punishment (see HRC, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).
5. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (see ECtHR, *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Er and Others v. Turkey*, cited in § 271 above, at § 94).
6. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey,* cited above, § 96; ECtHR, *Osmanoğlu v. Turkey,* no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine,* no. 28005/08, judgment of 14 March 2013, § 201).
7. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya,* Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v Algeria,* views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; *Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the case *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (…), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have led to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Amirov*, cited in § 220 above, at § 11.7).
8. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts; on the contrary, in the Court’s view, an assessment of the way in which the authorities of the respondent State reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v.Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
9. In this respect, it is the position of the European Court that findings under the procedural limb of Article 2 would also be of direct relevance in considering the existence of a violation of Article 3 (see ECtHR, *Basayeva and Others v. Russia*, cited in § 283 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 272 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 219 above, at § 140).
10. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117 - 118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107 - 110). However, in contrast, in the case under the Panel’s consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant’s mental distress caused by the commission of the crime itself.
11. The Panel is mindful that in the absence of a finding of State responsibility for the disappearance, the European Court has ruled that it is not persuaded that the authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity, which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among others, ECtHR, *Tovsultanova v. Russia*, no. 26974/06, judgment of 17 June 2010, § 104; ECtHR, *Shafiyeva v. Russia*, no. 49379/09, judgment of 3 May 2012, § 103).

#### Applicability of those principles to the Kosovo context

1. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 214 - 227 above).
2. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 24 above).
3. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaint before it, considering the particular circumstances of the case.
4. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.

#### Compliance with the substantive obligation under Article 3

1. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 3 of the ECHR.
2. The Panel notes the proximity of the family ties between the complainant and Mr Mladen Kostić, as the latter is the complainant’s father.
3. The Panel recalls the failure established above in relation to the procedural obligation under Article 2. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety.
4. The complainant does not clarify in his complaint to the Panel whether he was provided with any details with regard to the investigation into the fate of his father and in relation to the possible perpetrators. However, as mentioned above (see § 117), in his complaint to the IPP at the Prizren DPPO, Mr Bogoljub Kostić, as well as the others who reported the same crimes, expressed his dissatisfaction with the complete absence of information from UNMIK about any investigation in this regard. The complainant even proposed to the IPP a course of action to collect evidence.
5. The only recorded contact between Mr Bogoljub Kostić and UNMIK authorities was in October 2006, when he received the mortal remains of his brother, Mr Nebojša Kostić (see § 54 above).
6. The Panel accepts the SRSG’s assertion that the fact that his mother, Mrs Angelina Kostić was interviewed twice as a witness in relation to the July 1998 events in Rahovec/Orahovac indicates that the family knew that the authorities (ICTY and, later, UNMIK) were investigating those events. However, the Panel considers that simply knowledge of an existing investigation(s) does not alleviate the suffering of the family members. The Panel further recalls its finding above, in relation to Article 2 of the ECHR, that UNMIK authorities failed to ensure that all the complainants in this case, including Mr Bogoljub Kostić, and their families, were involved in the investigative process to the extent necessary to safeguard their legitimate interests (see § 266).
7. The Panel recalls the above-mentioned failure by UNMIK to provide a plausible explanation for the unreasonably abrupt discontinuation of this investigation, as well as the failure to formally close it and inform the injured parties of such a closure (see §§ 255 and 259 - 260 above). This failure prevented them from exercising their rights as an injured party in the investigation and left them hoping that the investigation was ongoing. The Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave uncertainty to the complainant and his family about Mr Mladen Kostić’s fate and the status of the investigation. The Panel recalls in this respect that the mother of Mr Bogoljub Kostić had passed away, without knowing what happened to her husband.
8. In view of the above, the Panel concludes that the complainant and his family have suffered severe distress and anguish for a prolonged period of time, a large part of which falls within the Panel’s temporary jurisdiction, on account of the way the authorities of UNMIK have dealt with the case and as a result of their inability to find out what happened to Mr Mladen Kostić. Thus, in the Panel’s view, it is obvious that the pain which was inflicted on the complainant and his family, who had to live in uncertainty about the fate of Mr Mladen Kostić, must have been unbearable.
9. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the distress and mental suffering of the complainant and his family, in violation of Article 3 of the ECHR.

## Alleged violation of Article 5 of the ECHR

1. The complainants Mr Bogoljub Kostić, Mrs Petra Kostić, Mrs Slavica Banzić and Mrs Dragica Božanić further complain about UNMIK’s alleged failure to properly investigate their, or their relatives’, illegal arbitrary detention by the KLA. In this respect, the Panel considers that these complainants invoke a violation of the right to liberty, guaranteed by the procedural obligation under Article 5 of the ECHR.

### *The scope of the Panel’s review*

1. The Panel will consider the allegations under Article 5 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 163 - 166 above).

### *The Parties’ submissions*

1. The complainants, Mr Bogoljub Kostić, Mrs Petra Kostić, Mrs Slavica Banzić and Mrs Dragica Božanić, allege UNMIK’s failure to properly investigate their own, or their relatives’, illegal detention by the KLA following an attack on Rahovec/Orahovac and surrounding villages, on 17-19 July 1998.
2. Commenting on this part of the complaint, the SRSG first points out that the “alleged violating acts were committed by members of the KLA, i.e. non-State actors, in July 1998, approximately ten months prior to the deployment of UNMIK under Security Council resolution 1244 (1999) … In the present instance there is no assertion that the KLA acted under the authority of UNMIK or that UNMIK has in any way acquiesced, connived, or encouraged the alleged deprivation of liberty of the complainants, thus raising serious concerns related to the *ratione personae* competence of the Panel in this respect.”
3. The SRSG states that it is not correct to “automatically assimilate or extend procedural obligations connected to specific substantive provision under the ECHR to any other provision under the ECHR.” Furthermore, in the SRSG’s opinion, the existence of a procedural obligation in relation to Article 5 in this case is even more doubtful as the “alleged violation itself cannot be established within the remit of an Article 5 ECHR violation.”
4. Finally, the SRSG submits that in any event, there was a large-scale investigation into all events related to the July 1998 KLA attack in Rahovec/Orahovac municipality, which ultimately covered the allegations of illegal detention by the KLA, and in which “the complainants participated by providing witness accounts of the events, including the details of their detention by the KLA”. However, despite all efforts of UNMIK authorities, this investigation did not lead to the formal conviction of the perpetrators.
5. Therefore, according to the SRSG, there is no violation of Article 5 of the ECHR attributable to UNMIK.

### *The Panel’s assessment*

1. At the outset the Panel notes that the instances of arbitrary detentions presenting real threat of killing or disappearance may raise issues under Article 2 of the ECHR. However, the Panel considers it more appropriate to examine this part of the complaint under Article 5 of the ECHR, which protects the right to liberty.

#### General principles concerning obligations under Article 5

*Deprivation of liberty*

1. With regard to the definition of the “right to liberty”, the Panel refers to the case law of the ECtHR, that understands it as the physical liberty of persons; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion (see e.g.: *Creangă v. Romania* [GC], no. 29226/03, decision of 23 February 2012, § 92; *Engel and Others v. the Netherlands*, judgment of 8 June 1976, § 58). At the same time, deprivation of liberty is not limited only to the classic case of detention following arrest or conviction, but may take numerous other forms (see: *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, § 95).
2. Accordingly, ECtHR likewise considers that there may be situations of deprivation of liberty arising outside formal arrest and detention, in a variety of circumstances, including, but not limited to: the placement of individuals in psychiatric or social care institutions, confinement in airport transit zones, questioning in a police station, stops and searches by the police and house arrest and others (see, among many other authorities: *De Wilde, Ooms and Versyp v. Belgium*,judgment of 18 November 1970*; Nielsen v. Denmark*,judgment of 28 November 1988; *Storck v. Germany*, cited in § 314 above; *Amuur v. France*,judgment of 25 June 1996*; Shamsa v. Poland*,nos. 45355/99 and 45357/99, judgment of 27 November 2003; *Osypenko v. Ukraine*,no. 4634/04, judgment of 9 November 2010*; Salayev v. Azerbaijan*,no. 40900/05, judgment of 9 November 2010; *Gillan and Quinton v. the United Kingdom*, no. 4158/05; *Mancini v. Italy*,no. 44955/98 *and Dacosta Silva v. Spain*,no. 69966/01).
3. In determining whether someone has been “deprived of his liberty” within the meaning of Article 5, the ECtHR assesses a concrete situation, taking into account a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see: *Guzzardi v. Italy*, cited above, § 92; *Medvedyev and Others v. France* [GC], no. 3394/03, judgment of 10 July 2008 § 73; *Creangă v. Romania* [GC], cited above, § 91). The Court also considers the context in which the measure is taken as an important factor, since in some situation the public may be called on to endure restrictions on freedom of movement or liberty in the interests of the common good (see: *Nada v. Switzerland* [GC], no. 10593/08, § 226, ECHR 2012; *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 59, ECHR 2012).
4. The European Court further states that the notion of deprivation of liberty within the meaning of Article 5 § 1 contains both an objective element of a person’s confinement in a particular restricted space for a not negligible length of time, and an additional subjective element in that the person has not validly consented to the confinement in question (see: *Storck v. Germany*, no. 61603/00, judgment of 16 June 2005, § 74; *Stanev v. Bulgaria* [GC], § 117). There are other relevant objective factors which are to be considered, such as the possibility to leave the restricted area, the degree of control over the person’s movements, the extent of isolation and the availability of social contacts (see, e.g., *Guzzardi v. Italy*, cited above, § 95; *H.L. v. the United Kingdom*, no. 45508/99, § 91, ECHR 2004-IX; and *Storck v. Germany*, cited above, § 73).
5. At the same time, the Court stresses that, if the bulk of facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the relatively short duration of the detention does not affect this conclusion (*Rantsev v. Cyprus and Russia*, no. 25965/04, judgment of 7 January 2010, § 317; *Iskandarov v. Russia*, no. 17185/05, judgment of 23 September 2010, § 140). Furthermore, the fact that a person is not handcuffed, put in a cell or otherwise physically restrained does not constitute a decisive factor in establishing the existence of a deprivation of liberty (*M.A. v. Cyprus*, no. 41872/10, decision of 23 July 2013, § 193).

*Detention by non-state parties*

1. According to the ECtHR, there may be situations where individuals are detained by non-state actors (by institutions such as private hospitals, nursing homes and children homes etc.), but this is done with the knowledge and acquiescence of a public authority (see e.g. ECtHR, *Riera Blume and Others v. Spain*, no. 27680/97, judgment of 14 October 1999; ECtHR, *Rantsev v. Cyprus and Russia*, cited above).
2. The Panel also refers to the case law of the UN HRC which stresses that States must protect individuals in their territory from illegal deprivation of liberty also by non-state actors. In this respect, the UN HRC clearly stated: “States parties have the duty to take appropriate measures to protect the right to liberty of person against deprivation by third parties. States parties must protect individuals against abduction or detention by individual criminals or irregular groups, including armed or terrorist groups, operating within their territory” (HRC, General Comment No. 35, cited in § 210 above, at § 7).

*Positive obligations*

1. The ECtHR further states that there is a positive obligation on States to protect the liberty of its citizens, in keeping with its case law on Article 2, 3 and 8; it reflects importance of personal liberty in a democratic society and plugs what would otherwise be a “sizeable gap in the protection from arbitrary detention, which would be inconsistent with the importance of personal liberty in a democratic society” (ECtHR, *Storck v Germany*, cited in § 314 above, at § 102; see also Stanev v. Bulgaria [GC], no. 36760/06, judgment of 17 January 2012, § 120; Medova v. Russia, no. 25385/04 judgment of 15 January 2009, §§ 123-125). Therefore the State is “obliged to take measures providing effective protection of vulnerable persons including the reasonable steps to prevent deprivation of liberty of which the authorities have or ought to have knowledge” (*ibid.*).
2. In case *Kurt v Turkey*, the European Court states that “Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since” (ECtHR, *Kurt v Turkey*, no. 15/1997/799/1002, judgment of 25 May 1998, § 124).
3. In the same case, the ECtHR found a violation of safeguards contained in Article 5 by a State, because the authorities “failed to offer any credible and substantiated explanation for the whereabouts and fate of the applicant’s son after he was detained in the village and that no meaningful investigation was conducted into the applicant’s insistence that he was in detention” (*ibid*., § 128).

*Detention of women*

1. The Panel further refers to the jurisprudence of the UN HRC establishing the positive obligation under Article 9 of the ICCPR (right to liberty), including *vis-à-vis* the arbitrary detention of civilians, in particularly women, by non-state actors in the situation of armed conflict, which makes them especially vulnerable to the sexual and gender based violence (see: HRC, General Comment No. 35, cited in § 210 above, at § 9).
2. The Panel also observes and agrees with the position expressed in the existing jurisprudence that abduction in life-threatening circumstances and subsequent detention also creates the potential for further grave human rights violations, and that the obligation to protect from one may overlap with obligations to protect from others. In particular, the HRC clearly states that “The right to life guaranteed by article 6 of the Covenant, including the right to protection of life under article 6, paragraph 1, may overlap with the right to security of person guaranteed by article 9, paragraph 1. The right to personal security may be considered broader to the extent that it also addresses injuries that are not life-threatening. Extreme forms of arbitrary detention that are themselves life-threatening violate the rights to personal liberty and personal security as well as the right to protection of life, in particular enforced disappearances” (HRC, General Comment No. 35, cited above, at § 56).
3. The HRC further states that “Arbitrary detention creates risks of torture and ill-treatment, and several of the procedural guarantees in article 9, serve to reduce the likelihood of such risks. Prolonged incommunicado detention violates article 9 and would generally be regarded as a violation of article 7 [prohibition of torture]. The right to personal security protects interests in bodily and mental integrity that are also protected by article 7” (HRC, General Comment No. 35, cited above, § 56).
4. The Panel also observes that special additional danger, including rape and sexual slavery, exist for women and girls when they are deprived of liberty in situations of armed conflict (see e.g. UN Commission on Human Rights, *Contemporary Forms of Slavery. Systematic rape, sexual slavery and slavery-like practices during armed conflicts*. Report by Ms. Gay J. McDougall, Special Rapporteur, UN document E/CN.4/Sub.2/1998/13, 22 June 1998).
5. According to Article 5 of the UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict, proclaimed by the UN General Assembly resolution 3318 (XXIX) of 14 December 1974 “all forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories shall be considered criminal.”
6. Under international human rights law gender-based violence against women is violence that affects women disproportionately (see for instance UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), General recommendation No. 19, 1992: Violence against Women; and most recently the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 11 May 2011), Article 3 (d): ‘“gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately’).
7. Arbitrary deprivation of liberty of women is recognized as a form of gender-based violence (see for instance the UN GA Declaration on Elimination of Violence against Women, UN General Assembly resolution 48/104 of 20 December 1993, Article 1: “the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”; Protocol on the Rights of Women in Africa (11 July 2003) to the African Charter on Human and Peoples’ Rights, Article 1 j: “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life…”; the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 11 May 2011), Article 3 (a): ““violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”).
8. The Panel recalls that the human right law and the IHL are complementary legal regimes (see § 213 above). In this respect, it should be noted that the ICRC also stresses that there is a pressing need for special protection for women during armed conflicts: “it is important to take into consideration both the legal protection granted to specific population groups – e.g. minors, women and refugees – and contextual factors, which can increase the vulnerability and the exposure to risk of certain segments of the population, such as: … groups that may be targeted or marginalized owing to the dynamics of the conflict (based on ethnicity, religion, geography, political beliefs, etc.); populations who have been displaced as a result of the hostilities; categories of person who may be at particular risk owing to their physical vulnerability”.[[13]](#footnote-13) Furthermore, the ICRC recognises that “sexual violence and/or attacks on their lives, dignity and physical integrity” as a special vulnerability factor for women and girls (*ibid*., p. 20).

*Obligation to investigate*

1. With respect to the procedural obligation to investigate allegations of illegal deprivations of liberty, the Panel recalls the general standards in this area, highlighted by the HRC (emphasis added):

“Article 2, paragraph 3 [of the ICCPR], requires that in addition to effective protection of Covenant rights States parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including, in particular, children. … Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. … A failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant” (HRC, General Comment No. 31 (80), *The nature of the general legal obligation imposed on States parties to the Covenant*, 29 March 2004, Official Records of the UN General Assembly, 59th session, Supplement No. 40 (A/59/40), Annex III, § 15).

1. In the *Cyprus* case, the European Court, having been unable to establish “that during the period under consideration any of the Greek-Cypriot missing persons were actually being detained by the Turkish-Cypriot authorities”, nevertheless found a continuing violation of Article 5 of the ECHR because of the “failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the missing Greek-Cypriot persons in respect of whom there is an arguable claim that they were in custody at the time they disappeared (ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 150 and 151).
2. Furthermore, in the case *El-Masri,* the ECtHR also found the respondent State’s failure to conduct a “meaningful investigation … into the applicant’s credible allegations that he was detained arbitrarily” constitutes a violation of Article 5 of the ECHR (ECtHR, *El-Masri*, cited in § 206 above, at § 242).
3. States are under an obligation to exercise due diligence to investigate acts of gender-based violence, thus including the arbitrary deprivation of liberty of women. See for instance the UN General Assembly Declaration on Elimination of Violence against Women, UN General Assembly resolution 48/104 of 20 December 1993, Article 4 (c): “Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 11 May 2011), Article 5 (2): “Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.” The CEDAW Committee has also stated that: “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation” (CEDAW Committee, General recommendation No. 19, 1992: Violence against Women).
4. The Panel notes that the HRC pays special attention to the obligation to investigate human rights violations against particular categories of victims, stressing that “States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury. ... States parties must respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders and journalists, retaliation against witnesses, violence against women … violence against children” (HRC, General Comment No. 35, cited in § 210 above, at § 9).

#### Compliance with the procedural obligations under Article 5

1. With regard to the applicability of the above standards to the Kosovo context, the Panel refers to its view on the same issue with regard to Article 2 and 3, developed above (see §§ 214 - 224 and 290 - 293 above).
2. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 5 of the ECHR.
3. Considering the circumstances of the present case, the Panel first notes that the deprivation of liberty, the subject of the complaints under Article 5, took place a year prior to the deployment of UNMIK in Kosovo. Thus there may be no allegation that the KLA had in any way acted under UNMIK’s authority, or that UNMIK had any knowledge of that illegal detention.
4. The undisputed facts are that a number of civilians, including Mrs Angelina Kostić, Mrs Petra Kostić, Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić, had been abducted by the KLA from their homes, on 18 July 1998, separated from the men of their families, detained, and afterwards released to the ICRC, on 22 July 1998. This group comprised mainly women, but also some elderly men and those with disabilities, Orthodox monks and children. Thus, in the Panel’s view, this separation and subsequent detention affected women disproportionally. UNMIK was thus obliged to investigate with due diligence this act of gender-based violence.
5. The Panel notes that, notwithstanding its limited duration, the complainants’ abduction and deprivation of liberty for four days by the KLA amounted to illegal detention in the sense of Article 5 of the ECHR. In this regard, the Panel recalls that they were held a day and a night under armed guard in a camp.
6. The Panel is aware that there is an additional danger, including sexual violence exists for women and girls when they are deprived of liberty, including in situations of armed conflict. In the Panel’s view, investigation of any situation when women are deprived of liberty by a party to the armed conflict must take into account the potential possibility of sexual and gender-based violence against them. An effective investigation in such circumstances should be conducted in a gender-sensitive manner. In this respect, the Panel notes that the CEDAW Committee, in its General Recommendation No. 33, recommends that the State parties ensure that “the professionals of justice systems handle cases in a gender-sensitive manner” (CEDAW, “General Recommendation No. 33: On women’s access to justice” CEDAW/C/GC/33, 23 July 2015, § 15(c)).
7. In light of the principles expressed above and contrary to the SRSG’s argument (see § 307 above), the Panel considers that the detention of Mrs Angelina Kostić, Mrs Petra Kostić, Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić required an investigation by competent authorities, in this case by UNMIK, upon its deployment in Kosovo.
8. The Panel recalls that, as confirmed by the SRSG, a large-scale investigation was initiated by UNMIK Police and IPPs into the alleged war crimes committed by the KLA against Serbian and other non-Albanian civilians during the attack in Rahovec/Orahovac area, in July 1998. The Panel also notes that the complainants were interviewed as witnesses in the context of this investigation. However, the main focus of those interviews was mostly in regard to the abductions, disappearances and killings but did not appear to take into account the gender dimensions.
9. The Panel recalls that it has already found that this investigation did not meet the requirements of effectiveness under Article 2 of the ECHR. The Panel further notes that the investigative file does not reflect any specific arrangement in place to ensure that any information with regard to the potential danger the women may have been exposed to during their illegal detention by the KLA was collected, preserved, analysed and used towards identifying instances of violence against women and bringing the perpetrators to justice. The records of the interviews with the complainants and other survivors of the abduction and detention in July 1998, show that the issues of gender and additional vulnerability were not taken into consideration by the authorities, as the situation of the complainants would have required.
10. In particular, the investigative file in the Panel’s possession shows that only two victims, Mrs Petra Kostić and Mrs Angelina Kostić, were interviewed by the ICTY and UNMIK Police. The Panel notes that these interviews, as well as all interviews with other witnesses, including female and children survivors of abductions and detention, were conducted by male investigators. The Panel is concerned that these deficiencies in the investigations may have resulted in the loss of information about patterns of violence against civilians in Kosovo.
11. The Panel recalls in this respect that the lack of information regarding the possible abuses of women by KLA during the armed conflict in Kosovo was already acknowledged by researchers.”[[14]](#footnote-14) The Panel is also concerned that the lack of such an investigation, may have contributed to the overall lack of information and documents about the violence against women in Kosovo, thus introducing additional obstacles for the victims in their attempts to get any form of redress for their suffering.
12. Therefore, in light of the finding of a violation of the procedural limb of Article 2 of the ECHR, the Panel finds that there was also a violation of the rights of Mrs Angelina Kostić, Mrs Petra Kostić, Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić, guaranteed by Article 5 of the ECHR.

# CONCLUDING COMMENTS AND RECOMMENDATIONS

1. In the view of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
2. The Panel notes that killings, abductions and arbitrary detentions, enforced disappearances, torture and inhumane and degrading treatment constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for killings, abductions and/or disappearances in life-threatening circumstances and deprivation of liberty. Its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
3. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s mission, made compliance with UNMIK’s human rights obligations difficult to achieve.
4. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 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.
5. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

**-** In line with the case law of the ECtHR on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, cited in § 279 above, at § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation under Articles 2 and 5 of the ECHR, that the circumstances surrounding abduction and killing of Mr Živko Kostić, Mr Lazar Kostić, Mr Todor Kostić, Mr Nebojša Kostić, Mr Rajko Nikolić, Mr Cvetko Nikolić, Mr Spasoje Banzić, Mr Mladen Božanić and Mr Nemanja Božanić, the killing of Mr Anđeljko Kostić, the abduction and disappearance of Mr Mladen Kostić, as well as the abduction and illegal detention of Mrs Angelija Kostić, Mrs Petra Kostić, Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić, 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 above mentioned violations, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainants and their families 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 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;

- In line with the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) “General Recommendation No. 19: Violence against women”, 1992 (§ 24 (i)) and the “General Recommendation No. 33: On women’s access to justice” (cited in § 339 above, at §§ 18(d) - 19), ensure that sufficient remedies are further provided to the female complainants in this case;

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

FOR THESE REASONS,

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH REGARD TO MR MLADEN KOSTIĆ (CASE NO. 232/09);**
3. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE RIGHTS OF MRS ANGELINA KOSTIĆ, MRS PETRA KOSTIĆ, MRS SLAVICA BANZIĆ, MRS DESANKA BANZIĆ AND MRS DRAGICA BOŽANIĆ, GUARANTEED BY ARTICLE 5 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.**
4. **RECOMMENDS THAT UNMIK:**
5. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE KILLING OF MR ANĐELJKO KOSTIĆ, ABDUCTION AND KILLING OF MR ŽIVKO KOSTIĆ, MR LAZAR KOSTIĆ, MR TODOR KOSTIĆ, MR NEBOJŠA KOSTIĆ, MR RAJKO NIKOLIĆ, MR CVETKO NIKOLIĆ, MR SPASOJE BANZIĆ, MR MLADEN BOŽANIĆ, MR NEMANJA BOŽANIĆ, MR DUŠKO PATRNOGIĆ AND MR ALEKSANDAR STANOJEVIĆ, ABDUCTION AND DISAPPEARANCE OF MR MLADEN KOSTIĆ, AS WELL AS ABDUCTION AND ARBITRARY DETENTION OF MRS ANGELINA KOSTIĆ, MRS PETRA KOSTIĆ, MRS SLAVICA BANZIĆ, MRS DESANKA BANZIĆ AND MRS DRAGICA BOŽANIĆ, IS CONTINUED IN COMPLIANCE WITH ARTICLES 2 AND 5 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
6. **PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABOVE MENTIONED VIOLATIONS, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS AND THEIR FAMILIES;**
7. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANTS AND THEIR FAMILIES FOR MORAL DAMAGE IN RELATION TO THE FINDING OF A VIOLATION OF ARTICLES 2 OF THE ECHR, OF ARTICLE 3 WITH REGARD TO MR BOGOLJUB KOSTIĆ AND OF ARTICLE 5 WITH REGARD TO MRS ANGELINA KOSTIĆ, MRS PETRA KOSTIĆ, MRS SLAVICA BANZIĆ, MRS DESANKA BANZIĆ AND MRS DRAGICA BOŽANIĆ;**
8. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
9. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
10. **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

**BDMP** Bureau for Detainees and Missing Persons

**CCIU** Central Criminal Investigation Unit

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

**CEDAW** Convention on the Elimination of All Forms of Discrimination against Women

**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** EU Rule of Law Mission in Kosovo

**FRY** Federal Republic of Yugoslavia

**HRAP** Human Rights Advisory Panel

**HRC** UN Human Rights Committee

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

**ICC** International Criminal Court

**ICMP** International Commission of Missing Persons

**ICRC** International Committee of the Red Cross

**ICTY** International Criminal Tribunal for former Yugoslavia

**IHL** International Humanitarian Law

**IPP** International Public Prosecutor

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

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

**MPU** Missing Persons Unit

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

 *МУП*)

**NATO** North Atlantic Treaty Organization

**NIAC** Non-International Armed Conflict

**OMPF** Office on Missing Persons and Forensics

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

**PCPCK** Provisional Criminal Procedure Code of Kosovo

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

**UN** United Nations

**UNCAT** UN Committee Against Torture

**UNHCR** UN High Commissioner for Refugees

**UNMIK** UN Interim Administration Mission in Kosovo

**VJ** Yugoslav Army (Serbian: *Воjскa Jугославиjе, ВJ*)

**VRIC** Victim Recovery and Identification Commission

**WCIU** War Crimes Investigation Unit

1. [\*] Editorially revised pursuant to Rule 47.2 of the Rules of Procedure, on 20 November 2015. [↑](#footnote-ref-1)
2. All texts are available at the Panel’s webpage: [www.unmikonline.org/hrap/Eng/Pages/default.aspx](http://www.unmikonline.org/hrap/Eng/Pages/default.aspx) [↑](#footnote-ref-2)
3. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-3)
4. 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-4)
5. See: Brasey V. *Dealing with the Past: The forensic-led approach to the missing persons issue in Kosovo* // Politorbis Nr. 50 – 3, 2010, p. 163. [↑](#footnote-ref-5)
6. See: *Ibid*., p. 165. [↑](#footnote-ref-6)
7. The OMPF database an electronic source not open to public. The Panel accessed it with regard to this case on 20 October 2015. [↑](#footnote-ref-7)
8. See: ICRC Family Links online database [electronic source]: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 20 October 2015). [↑](#footnote-ref-8)
9. See: ICMP Missing Persons Inquiry online database [electronic source]: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 20 October 2015). [↑](#footnote-ref-9)
10. See: Statement by Carla Del Ponte Prosecutor of the ICTY on the investigation and Prosecution of crimes committed in Kosovo, 29 September 1999 // ICTY Official Webpage [electronic source] - http://www.icty.org/sid/7733 (accessed on 20 October 2015). [↑](#footnote-ref-10)
11. See: *Witness Security and Protection in Kosovo: Assessment and Recommendations,* a report by the OSCE Mission in Kosovo and the US State Department, November 2007, p. 5 // OSCE official website [electronic source]: <http://www.osce.org/kosovo/28552?download=true> (accessed on 20 October 2015). [↑](#footnote-ref-11)
12. See: Kosovo *War Crimes Trials: An Assessment Ten Years On 1999 – 2009*, a report by the OSCE Mission in Kosovo, May 2010, p. 5 // OSCE official website [electronic source]: <http://www.osce.org/kosovo/68569> (accessed on 20 October 2015). [↑](#footnote-ref-12)
13. *Enhancing Protection for Civilians in Armed Conflict and other Situations of Violence*, ICRC, Second edition, November 2012, pp. 18 – 19 // ICRC webpage [electronic source] – <https://www.icrc.org/eng/assets/files/other/icrc-002-0956.pdf> (accessed on 20 October 2015). [↑](#footnote-ref-13)
14. See: *Healing the Spirit. Reparations for Survivors of Sexual Violence Related to the Armed Conflict in Kosovo*. A study by Victoria S. Rames, UN OHCHR, 2013, p. 39 // OHCHR official website [electronic source] – available at: <http://www.ohchr.org/Documents/Issues/Women/WRGS/PeaceAndSecurity/StudyHealingTheSpirit.pdf> (accessed on 20 October 2015). [↑](#footnote-ref-14)