

**OPINION**

**Date of adoption: 17 October 2014**

**Case No. 245/09**

**Slađana REMIŠTAR**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 17 October 2014,

with the following members taking part:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

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

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 13 April 2009 and registered on 30 April 2009.
3. On 23 December 2009, the Panel requested the complainant to provide additional information. No response was received.
4. On 10 November 2010, the Panel reiterated its request for information. On 14 September 2011, the Panel received the complainant’s response.
5. On 9 May 2012, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on admissibility.
6. The SRSG provided UNMIK’s response on 1 June 2012.
7. On 26 September 2012, the Panel declared the complaint admissible.
8. On 15 October 2012, the Panel forwarded its decision on admissibility to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
9. Following the Panel’s inquiries, on 4 October 2012, UNMIK requested the Archives and Records Management Section of the United Nations’ (UN) Headquarters in New York to locate and return to UNMIK a number of investigative files related to the complaints before the HRAP.
10. 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 some documents related to this complaint, to the Panel.
11. On 16 August 2013, the SRSG presented UNMIK’s response in relation to the merits of the complaint, together with the copies of the investigative files.
12. On 29 September 2014, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the case could be considered final.
13. On 6 October 2014, UNMIK provided its response.
14. **THE FACTS**
15. **General background[[2]](#footnote-2)**
16. The events at issue took place in the territory of Kosovo during the armed conflict and after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
17. 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.
18. 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.
19. 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.
20. 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.
21. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
22. 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.
23. 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.
24. 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”.

1. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document reiterating, among other things, its commitment to solving the fate of missing persons from all communities, and recognizing that the exhumation and identification programme is only a part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
2. 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.
3. On the same date, UNMIK and EULEX signed a Memorandum of Understanding 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.
4. **Circumstances surrounding the abduction and probable killing of Mr Nenad Remištar**
5. The complainant is the wife of Mr Nenad Remištar.
6. The complainant states that Mr Remištar, who worked as a traffic police officer at the Gjakovё/Đakovica police station, Pejё/Peć region, was abducted on 13 June 1998 by members of the Kosovo Liberation Army (KLA), while driving his car between Klinё/Klina and Gjakovё/Đakovica.
7. Mrs Remištar also informs the Panel that an article published in the Serbian daily “Novosti”, on 18 August 2011, reports that after abduction her husband was taken to a KLA detention facility in Jabllanicë/Jablanica village, Gjakovё/Đakovica municipality, where he was later executed. However, his mortal remains have never been located and returned to the family.
8. The complainant indicates that she reported her husband’s abduction to the Serbian Red Cross and the Serbian Ministry of Internal Affairs (MUP). A certificate, dated 9 April 2009, issued by the MUP Headquarters for Pejё/Peć Region, based in Kragujevac, Serbia proper, corroborates the details of Mr Remištar’s abduction, as given by the complainant. The complainant also attaches a copy of a certificate, issued by the Serbian Red Cross on 13 April 2009, confirming that her husband was abducted on 15 June 1998, during the conflict in Kosovo.
9. The tracing request of the International Committee of the Red Cross (ICRC) with regard to Mr Remištar remains open[[3]](#footnote-3). His name is also 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[[4]](#footnote-4). The entry in relation to him in the online database maintained by the ICMP reads in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”[[5]](#footnote-5).
10. **The investigation**

*Disclosure of relevant files*

1. In this case, the Panel received from UNMIK only “very limited files” in relation to the actions undertaken by the UNMIK OMPF and UNMIK Police. On 17 December 2012, the Panel received some investigative documents in relation to the investigation into Mr Nenad Remištar’s abduction, which were returned from the UN Headquarters’ archives (see § 9 above). Evidence of the investigation into the abduction and probable killing of Mr Nenad Remištar by the UN International Criminal Tribunal for the Former Yugoslavia (ICTY) was obtained by the Panel from the ICTY webpage[[6]](#footnote-6). The Panel notes that UNMIK has confirmed that all documents available to it have been provided.
2. Concerning disclosure of the information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that, although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by the investigative authorities is provided in the paragraphs to follow.

*OMPF and WCIU investigative files*

1. The OMPF part of the investigative file consists of a Victim Identification Form for Mr Nenad Remištar, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 29 above). Besides his personal details and ante-mortem description, it provides the name and complete contact details of his mother. One of the fields on the first page reads that: “At the same moment another vehicle was stopped, from where another person was kidnapped but later released”; no information as to the identity of this person is provided.
2. The UNMIK Police part of the file starts with a letter, dated 30 November 1999, addressed by the Serbian MUP to UNMIK Police. It provides brief details of Mr Remištar’s disappearance, his personal details and information on the car he was driving. According to this letter, a photograph of Mr Remištar was attached to it, but it is not found in the file; nor is any response to this letter in the file.
3. The file further contains an undated handwritten document, signed by the complainant, repeating the details of her husband’s disappearance, and providing her full contact details.
4. An UNMIK Police interoffice memorandum, dated 13 February 2000, is addressed by the MPU to all the main UNMIK Police offices in Kosovo. It provides an overview of the available information related to Mr Nenad Remištar’s disappearance and requests all UNMIK Police offices to check their records and sources for any information in relation to him and, in case any leads are developed, to conduct the necessary investigative actions and inform the MPU. The six responses to this request were all negative.
5. Likewise, on 13 February 2000, the MPU requested the ICRC to check their respective records in relation to Mr Nenad Remištar. On 18 February 2000, the ICRC responded that he was registered in their database as a missing person who had not yet been located.
6. The following one-page UNMIK Police File Diary Register on the case 1999-000045, related to Mr Remištar’s disappearance, has three entries, dated 30 March 2000, 15 April 2000 and 1 June 2002, but which add no relevant information.
7. An UNMIK Police MPU Case Continuation Report (CCR) on the case no. 2002-000579 indicates that this case was entered in their database on 27 June 2002. A handwritten note on top of this document reads “Duplicate with 1999-000045”.
8. An MPU Ante-Mortem Report on the MPU case no. 0318/INV/04 in relation to the disappearance of Mr Remištar is cross-referenced to the investigations no. 1999-000045 and 2002-000579. This report was initiated on 8 April 2004 and completed on 23 April 2004. This report refers to Mr Nenad Remištar’s mother as a witness, providing her telephone number in Serbia proper. The report’s field “Results of Investigations” states that Mr Remištar’s brother and son provided blood samples and that the lists of returnees to his home village were checked, with negative results. At the conclusion of this report, the investigator wrote: “Due to the fact that there is no trace, the case should remain pending.” The status of the case is put as “pending”.
9. A printout from the MPU database in relation to the case no. 0318/INV/04, dated 27 April 2004, cross-referenced to the case no. 1999-000045, briefly states the known facts about Mr Nenad Remištar’s disappearance. The report’s field “Request Summary” reads “There is a lack of information”, and the field “Results” reads “Pending”.
10. The last document in the investigative file is an UNMIK Police WCIU Case Analysis Report, dated 17 October 2007, in relation to the case no. 2002-00154. The field “Current Status” reads “closed”, “Type of Crime” – “missing person”; the fields “Number of Known Witnesses”, “Number of Witness Statements” and “Number of Known Suspects read “0”. The field “Summary of the Crime” briefly reflects the information available to the investigators, while the field “Brief Description of Evidence” states: “There are no evidence. Just an initial report and a request from Republic of Serbia.” The recommendation of the reviewing investigator is: “Because there are no evidence, just an initial report, the case should be closed.”
11. A handwritten note at the bottom of this document, dated 20 December 2007, suggests that the file was again reviewed, on that date, by another WCIU officer, who recommended passing this file to the Ante Mortem section of the WCIU “for follow up investigation as to the whereabouts of the missing person.”

*ICTY Proceedings*

1. The abduction and probable killing of Mr Nenad Remištar was investigated by the ICTY, as a part of the proceedings in the case *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj* (IT-04-84).
2. Documents available to the Panel confirm that from October 2005 until May 2007, UNMIK responded to more than 100 Requests for Assistance (RFA) from the ICTY Office of the Prosecutor (OTP), providing the requested assistance and the documentation.
3. The first indictment in this case was filed at the ICTY on 4 March 2005 (IT-04-84-I). This investigation concentrated on crimes allegedly committed by the KLA during the armed conflict in Kosovo, which were “closely related to that conflict in that the victims of those crimes, persons taking no active part in hostilities, were either Serb civilians or persons perceived to be collaborating with the Serbs or persons otherwise perceived to be not supporting the KLA.” In relation to Mr Nenad Remištar, the indictment states:

**COUNTS 29 and 30**

77. On or about 13 June 1998, a vehicle driven by Serbian Police officer, Nenad Remistar, was stopped at the KLA checkpoint situated on the road between Klina/Klinë and Dakovica/Gjakova. Nenad Remistar was taken to Jablanica/Jabllanica KLA Headquarters. Upon his arrival he was severely beaten on his arms, legs and back by KLA soldiers including Nazmi Brahimaj, brother of accused **Lahi Brahimaj**.

78. On or about 14 June 1998, Nenad Remistar was taken away from the Jablanica/Jabllanica KLA detention facilities by unknown KLA soldiers. He has not been seen alive since and remains missing.

…

Thereby **Ramush Haradinaj, Idriz Balaj,** and **Lahi Brahimaj** committed:

**Count 29:** A VIOLATION OF THE LAWS OR CUSTOMS OF WAR, Cruel Treatment, as recognised by Common Article 3(1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal;

**Count 30:** A VIOLATION OF THE LAWS OR CUSTOMS OF WAR, Murder, as recognised by Common Article 3(1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal.

1. The amended indictments which were filed later did not have any substantive amendments or additions to the information in relation to the complainant’s husband.
2. The following is an excerpt from the ICTY Trial Chamber’s Judgment IT-04-84-T in the same case, delivered on 3 April 2008 (emphasis added):

…

## 6.16 Cruel treatment, torture, and murder of Nenad Remištar and four unidentified people (Count 30)

396. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment, torture and murder of Nenad Remištar and of four unknown men in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Witness 73, Nebojša Avramović, Zoran Stijović and Witness 6.

397. Witness 73 stated that on 13 June 1998 Nenad Remištar, who worked as a traffic police officer in Đakovica/Gjakova, had left from Biča/Binxhë in Klina/Klinë municipality to go to Đakovica/Gjakova in his blue Opel Kadett, with Đakovica/Gjakova licence plates. He was dressed in civilian clothes. After 10 days, Dragiša Šimigić, a work colleague, and the MUP officer on duty in Đakovica/Gjakova, informed the witness that Nenad Remištar had been absent from work for that time. Aleksandar Remištar, Nenad’s father, learned from an unidentified Albanian that his son and a Catholic Albanian man had been kidnapped near the village of Rakovina/Rakovinë, in the municipality of Đakovica/Gjakovë and were being imprisoned in Jablanica/Jabllanicë in the same municipality. The unidentified Albanian said that Nenad Remištar was still alive and was being protected by a KLA soldier, who knew him. The unidentified Albanian man had received this information from the Catholic Albanian man.

398. Nebojša Avramović testified that the MUP employees Rade Popović (sic), Nikola Jovanović, and Nenad Remištar disappeared at the end of April or the beginning of May 1998 in the area around the Đakovica/Gjakovë – Peć/Pejë road. From the reports that he read at the time, Avramović concluded that Rade Popović (sic) and Nikola Jovanović were on duty. Their superior officer reported them as missing. Avramović testified that a report filed by Nenad Remištar’s relatives and his superior officers stated that Nenad Remištar was kidnapped while he was going from his home in Glina to work, when he was travelling along the Đakovica/Gjakovë-Priština/Prishtinë road. The Trial Chamber considers that the witness’s testimony referring to Rade Popović was actually referring to Rade Popadić, as evidenced by the connection with Nikola Jovanović noted above in section 6.12.2, above.

399. Zoran Stijović, head of the Analytical Section of the Priština/Prishtinë RDB Centre from 1995 until 1999, testified that the RDB had information that Nenad Remištar, a Serbian policeman, was detained in Jablanica/Jabllanicë.

400. Witness 6, a Catholic Albanian, testified that before 6 p.m. on 13 June 1998 he and “Nenad” were in a room adjacent to the entrance of the Jablanica/Jabllanicë compound. Witness 6 knew Nenad as a Serbian or Montenegrin policeman who worked in Đakovica/Gjakovë. Witness 6 had heard from Zokan Kuqi that Nenad was from Biča/Binxhë village, in Klina/Klinë municipality. Witness 6 saw Nazmi Brahimaj and a group of soldiers kick and beat Nenad with a baseball bat and other items, leaving him unconscious, bruised and unable to walk. The soldiers did not give any explanation why they were beating Nenad. Witness 6 did not remember seeing Lahi Brahimaj that evening. Witness 6 and Nenad were tied up and left in the room overnight. In the afternoon of the next day, 14 June 1998, two soldiers took Nenad away. Witness 6 never saw Nenad again. He later heard from Pavle Zuvić, a police officer, that Nenad had been killed at Jablanica/Jabllanicë and his body may have been dumped somewhere in the mountains near Peć/Pejë or Klina/Klinë

…

402. The evidence of Witness 73 is consistent with the testimony of Witness 6 and Witness 23 (see section 6.15, above) and the Trial Chamber is convinced that the Nenad referred to by Witness 6 was Nenad Remištar. The Trial Chamber is also satisfied that the beatings caused Nenad Remištar serious physical suffering. In light of the severity of the beatings, the Trial Chamber is furthermore convinced that the perpetrators must have intended to cause such suffering. For these reasons, the Trial Chamber is convinced that KLA soldiers committed cruel treatment against Nenad Remištar. On the basis of the ethnicity of the victim, his job as a policeman, and the absence of any reasonable alternative explanation for his detention and ill treatment, the Trial Chamber concludes that KLA soldiers mistreated Nenad Remištar to punish, intimidate and/or discriminate against him. For this reason the Trial Chamber concludes that KLA soldiers tortured Nenad Remištar.

403. Witness 6 testified that in the afternoon of 14 June 1998, two KLA soldiers took Nenad Remištar from the room where he and Witness 6 had spent the night. Witness 6 further testified that he never saw Nenad Remištar again. The Trial Chamber has heard multiple hearsay evidence from Witness 73 that Nenad Remištar was in Jablanica/Jabllanicë, alive and under the protection of a KLA soldier. This multiple hearsay evidence suggests that the original source was Witness 6 himself. The Trial Chamber considers the direct evidence of Witness 6 to be more reliable than the multiple hearsay evidence. As to Nenad Remištar’s death, Witness 6 could provide only hearsay evidence that he was killed in Jablanica/Jabllanicë, which Witness 6 learned from a Serbian police officer. The Trial Chamber did not receive evidence that corroborates this hearsay evidence. Considering that Nenad Remištar has never been seen again, the Trial Chamber accepts that he is, in all likelihood, dead. As his remains have not been recovered, there is no expert evidence as to the cause of his death. The Trial Chamber concludes that the evidence does not allow for a reasonable doubt that Nenad Remištar was murdered.

404. The Trial Chamber is convinced that the cruel treatment and torture were closely related to the armed conflict in Kosovo/Kosova, and that Nenad Remištar was not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

…

406. … The Trial Chamber therefore finds that the charge of murder is restricted to Nenad Remištar.

407. The Trial Chamber is furthermore convinced that these crimes were closely related to the armed conflict in Kosovo/Kosova, and that the victims were not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

…

1. Two of the three accused, Mr Ramush Haradinaj and Mr Idriz Balaj, were found not guilty on all counts of the indictment. The third accused, Mr Lahi Brahimaj was found guilty in torture and cruel treatment, but not in relation to Mr Nenad Remištar.
2. The Prosecutor appealed this judgement. Subsequently, on 19 July 2010, the ICTY Appeals Chamber partially granted the Prosecutor’s appeal, including in the part related to Mr Nenad Remištar, and ordered all three accused to be retried on the relevant counts. On 21 January 2011, the Prosecutor filed the 4th Amended Indictment (IT-04-84*bis*-PT), which reads:

**COUNT 4**

53. On or about 13 June 1998, Nenad Remistar, a Serbian Police officer, was stopped by KLA soldiers at a KLA checkpoint on the road between Klina/Klinë and \akovica/Gjakova. The KLA soldiers took him to Jablanica/Jabllanicë KLA detention facilities. Upon his arrival he was severely beaten with baseball bats by KLA soldiers including Nazmi Brahimaj, the brother of **Lahi Brahimaj**.

54. On or about 14 June 1998, Nenad Remistar was taken from the Jablanica/Jabllanicë KLA detention facilities. He was killed while in KLA custody. His body has not been recovered.

…

By these acts and omissions **Ramush Haradinaj, Idriz Balaj,** and **Lahi Brahimaj** committed as part of the JCE [Joint Criminal Enterprise] defined in paragraphs 23 to 25 above, the following crimes:

Count 4: A VIOLATION OF THE LAWS OR CUSTOMS OF WAR, Murder and Cruel Treatment, and Torture, as recognised by Common Article 3(1)(a) of the Geneva Conventions of 1949, punishable under Article 3 and Article 7(1) of the Statute of the Tribunal.

1. The Trial Chamber re-examined the evidence presented by the Prosecutor and came to the following conclusion:

**(c) Conclusion**

513. The Chamber is satisfied that on 13 June 1998 Nenad Remištar was taken to the KLA compound in Jabllanicë/Jablanica where he was severely beaten by Nazmi Brahimaj and other KLA soldiers. The Chamber is also satisfied that towards the end of June 1998 one Bosnian man and three Montenegrins were brought to the KLA compound in Jabllanicë/Jablanica where they were beaten and stabbed with knives by KLA soldiers in the presence of Nazmi Brahimaj and Hamza Brahimaj. These events are charged as murder, cruel treatment, and torture. The law on these offences has been set out earlier in this Judgement. With respect to the charges of torture and cruel treatment of Nenad Remištar the Chamber recalls its earlier findings that Nenad Remištar was detained in the KLA compound in Jabllanicë/Jablanica, tied up with a rope, that he was kicked and punched, and that he was beaten on his legs and arms with baseball bats and sticks by Nazmi Brahimaj and other soldiers. These acts were of the nature to cause Nenad Remištar severe pain and suffering and, in the Chamber’s findings, constitute the *actus reus* of both torture and cruel treatment. Considering the manner of the beatings and the nature of the implements used, the Chamber is satisfied that the perpetrators acted with the intent to cause Nenad Remištar severe pain and suffering. With respect to the special intent required for the offence of torture, the Chamber notes that Nenad Remištar was a Kosovo Serb affiliated with the MUP, which was part of the Serbian forces, one of the parties to the armed conflict. The Chamber infers from these facts that his beatings were carried out with the intent to punish him or to discriminate against him.

514. The Prosecution presented no evidence about the death of Nenad Remištar or the circumstances of his killing. The Chamber recalls that on 14 June 1998 Nenad Remištar was taken away from the room where he was detained in the KLA compound in Jabllanicë/Jablanica. His body has not been found. In the absence of any evidence about the events that followed his removal from the room in the KLA compound in Jabllanicë/Jablanica the Chamber does not conclude beyond reasonable doubt that Nenad Remištar is dead or that he died in the circumstances alleged in the Indictment.

…

516. Finally, with respect to the general requirement of Article 3 of the Statute that the victims were taking no active part in the hostilities, the Chamber recalls that at the time of the acts of torture and cruel treatment Nenad Remištar, the unknown Bosnian man and the three unknown Montenegrin men were in detention and, therefore, were taking no active part in the hostilities. With respect to the required nexus, the Chamber recalls that the perpetrators were soldiers participating in the armed conflict and that the victims were in their custody. The Chamber accepts on this basis that the general requirements of Article 3 are satisfied.

517. On the basis of the findings made above and leaving aside for the present the question of the individual criminal responsibility of the Accused, the Chamber finds that the charges of torture and cruel treatment of Nenad Remištar, the charges of torture and cruel treatment of the one unknown Bosnian man and the charge of cruel treatment of the three unknown Montenegrin men, supporting Count 4 are established.

1. On 29 November 2012, the Trial Panel found all three accused not guilty on all counts of the last indictment and ordered their release from detention (IT-04-84bis-T). The ICTY procedure on the case appears to be closed.
2. **THE COMPLAINT**
3. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and probable killing of Mr Nenad Remištar. In this regard the Panel deems that the complainant invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
4. The complainant also complains about the mental pain and suffering allegedly caused to herself by this situation. In this regard, she relies on Article 3 of the ECHR.
5. **THE LAW**
6. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
7. 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.
8. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
9. 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.
10. 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.
11. 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 § 99). 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.
12. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights “that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).
	1. **The parties’ submissions**
13. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the abduction and probable killing of Mr Nenad Remištar. The complainant also states that she was not informed as to whether an investigation was conducted and what the outcome was.
14. In his response, the SRSG first notes that UNMIK based its comments in relation to this case on “very limited files”, previously held by the OMPF and the UNMIK Police WCIU, which were provided by EULEX.
15. The SRSG accepts that Mr Nenad Remištar disappeared in life threatening circumstances. Although he had disappeared a year before the adoption of the UNSC Resolution No. 1244 (1999), establishing UNMIK, the SRSG does not dispute UNMIK’s responsibility to conduct an investigation into his disappearance under Article 2 of the ECHR, procedural part, commencing on 11 June 1999. In the words of the SRSG, “the essential purpose of such investigation [was] to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”
16. The SRSG further notes that at that time 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, as “KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.”
17. The SRSG underlines that the complainant does not allege a violation of the substantive part of Article 2, but rather of its procedural element. The SRSG states that “the procedural element of Article 2, ECHR 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.”
18. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources. Furthermore, after a long and brutal war, Bosnia and Herzegovina underwent fundamental overhaul of its internal structure and political system: Entities and Cantons were set up pursuant to the Dayton Peace Agreement, power-sharing arrangements were introduced in order to ensure effective equality between the “constituent peoples” in the post-conflict society (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos 27996/06 and 34836/06, ECHR 2009‑...), new institutions had to be created and the existing ones had to be restructured. Some reluctance on the part of the former warring parties to work with those new institutions could be expected in the post-war period, as evidenced in the present case. While it is difficult to pinpoint when exactly this process ended, the Court considers that the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005, following comprehensive vetting of the appointment of police and judiciary and the establishment of the War Crimes Sections within the Court of Bosnia and Herzegovina. All this considered and since there has been no substantial period of inactivity post-2005 on the part of the domestic authorities in the present case, the Court concludes that, in the circumstances obtaining at the material time, the domestic criminal investigation can be considered to have been conducted with reasonable promptness and expedition.”

1. In the view of the SRSG, UNMIK faced a very similar situation in Kosovo “from 1999 to 2008” as the one in Bosnia and Herzegovina “from 1995 to 2005”. The SRSG states that thousands of people were displaced or went missing during the Kosovo conflict. Many of the persons who went missing were abducted, killed, and buried in unmarked graves inside or outside of Kosovo, which made it very difficult to locate and recover their mortal remains.
2. In June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing persons; however its work was faced with many challenges at the beginning of its operations, due to the work previously done mostly by actors independent from UNMIK. Citing the OMPF Activity Report 2002-2004, the SRSG, states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština. The SRSG states that, in the effort to demonstrate that crimes were systematic and widespread, the ICTY teams conducted autopsies on as many bodies as possible, carrying out little or no identification work; moreover, unidentified bodies exhumed in 1999 were reburied in locations still unknown to the OMPF. After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations into missing persons “ex-officio, without any broader prosecutorial strategy. As a consequence, a large amount of unstructured information was collected.”
3. The SRSG adds that even more serious than “the shortfall of forensic standards was the lack of attention paid to the humanitarian agenda of identifying bodies and restituting their remains to their families. In a focused effort to demonstrate that crimes were systematic and widespread, the 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”.
4. The SRSG further 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 the OMPF is “testament to the vigour of its work between 2002 and 2008” and that “more bodies continued to be located in burial sites and more identifications and returns to family members are taking place, often based on information contained in UNMIK-OMPF files”. The SRSG continues that “therefore, it is apparent that the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one” in Kosovo, as reflected in the *Palić* case referred to above. The SRSG further notes that this process was “reliant on a number of actors rather than just UNMIK, for example the [ICMP], the [ICRC] and local missing persons’ organisations.”
5. The SRSG 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 the 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 explains that the 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 the 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 further states that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
3. With regard to the complaint of Mrs Remištar, the SRSG provides a brief overview of the actions undertaken by UNMIK authorities and the available investigative documents (see §§ 32 - 42 above). He stresses that it is not even clear who reported the disappearance of Mr Nenad Remištar to UNMIK Police, as only his mother, and not the complainant, is referred to as a witness in the above-mentioned MPU report (see § 39 above).
4. The SRSG continues that “[a]part from the information initially provided by the unknown source to UNMIK Police, no further witnesses of the alleged abduction came forward at any later point in time. UNMIK has noted in other missing persons’ cases that, without witnesses coming forward or physical evidence being discovered, police investigations inevitably stall because of a lack of evidence.”
5. Concluding his submission, the SRSG states that “[t]he very limited investigation files made available to UNMIK are not conclusive and reveal an overall dearth of information, but the investigation was regularly pursued by UNMIK Police from 2000 to the end of 2007.” Thus, according to the SRSG “UNMIK Police complied with its obligation to open and pursue an investigation on the disappearance of Mr. Remištar, pursuant to the procedural requirement of Article 2, ECHR.”
6. The SRSG also informed the Panel that UNMIK might submit further comments on this case, “[a]s there is a possibility that additional and conclusive information exists”, beyond the documents presented to the Panel. However, no such comments have been received to date.
	1. **The Panel’s assessment**
7. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR in that UNMIK Police did not conduct an effective investigation into the abduction and probable killing of Mr Nenad Remištar.
8. *Submission of relevant files*
9. The SRSG observes that all available files regarding the investigation have been presented to the Panel, but that they were “very limited”. The file received by the Panel from the UN Headquarters in New York (see §§ 8 - 9) contained the copies of the same documents. Additional evidence of the involvement of the ICTY in the investigation into the abduction and probable killing of Mr Nenad Remištar was obtained by the Panel from the ICTY webpage. On 10 October 2014, UNMIK confirmed to the Panel that the disclosure may be considered complete (see § 12 above).
10. 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).
11. 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. The Panel likewise notes that UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
12. 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).
13. *General principles concerning the obligation to conduct an effective investigation under Article 2*
14. 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.
15. 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).
16. 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 § 47 above, at § 136).
17. 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).
18. Setting out the standards of an effective investigation, the Court has stated that “beside 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).
19. 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 § 83 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).
20. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECHR 2002‑II).
21. Specifically with regard to persons disappeared and later found dead, which is not the situation in this case, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that “the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 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 § 86 above, at § 64).
22. 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 § 85 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 85 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).
23. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5;see also HRC,  *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, *Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives*, UN Document A/HRC/22/52, 1 March 2013, § 23-26).
24. *Applicability of Article 2 to the Kosovo context*
25. The Panel is conscious of the fact that Mr Nenad Remištar was abducted and disappeared almost a year prior to the deployment of UNMIK in Kosovo, during the armed conflict, when crime, violence and insecurity were rife.
26. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK’s deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
27. 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.
28. 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).
29. 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 § 86 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 § 90 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 § 85 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 85 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
30. 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” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at § 164; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 83 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 § 85 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
31. 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 § 82 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).
32. 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 § 21 above).
33. 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 § 86 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
34. 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.
35. 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.
36. *Compliance with Article 2 in the present case*
37. Turning to the particulars of this case, the Panel first notes that according to the documents which were made available to the Panel, UNMIK became aware of the abduction of Mr Nenad Remištar in November 1999 (see § 33 above). During 2000, UNMIK Police searched available databases for any information related to him, but with negative results (see §§ 35 - 37 above). In 2002, the information related to this case was entered in the UNMIK Police database. However, most of those, except a case review in 2007 (see §§ 41 - 42 above), lay outside of the Panel’s temporal jurisdiction (see § 59 above).
38. In this particular case, it is clear that the abduction and probable killing of Mr Nenad Remištar was the subject of an ICTY investigation in the case no. IT-04-84, *Haradinaj et al* (see § 43 - 51 above). In particular, the ICTY Trial Chamber’s Judgment IT-04-84-T in that case, delivered on 3 April 2008, mentions at least four witnesses who in their statements referred to Mr Nenad Remištar’s abduction, detention by the KLA and his probable killing (see § 47 above). However, this process did not lead to the identification and punishment of the perpetrator(s), as after the re-trial, on 29 November 2012, the Trial panel pronounced all the accused not guilty with regard to the alleged crimes, including the allegations of instigation, ordering and planning the murder Mr Nenad Remištar (see § 51 above).
39. As an 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, the Panel considers that the aspect that still needs to be examined from the perspective of the procedural obligation under Article 2 of the ECHR is whether any obligation under this Article, besides cooperation and provision of assistance to the ICTY, remained with UNMIK during the period of the Panel’s jurisdiction.
40. 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. The investigation and prosecution of offences, which may fall outside the scope of the jurisdiction described above is properly the responsibility of UNMIK, through UNCivPol and the newly formed civilian police in Kosovo, assisted by KFOR. To ensure that the OTP ICTY and the agencies just mentioned are operating within their proper spheres, it will be helpful for an effective liaison to be maintained between them and the OTP. This should enable the Prosecutor to be kept informed about the nature and status of investigations being conducted by UNMIK (UNCivPol and the civilian police force), assisted by KFOR, into matters that may potentially have a relationship to crimes within the purview of the ICTY.” In the same statement, the ICTY Prosecutor 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 and its Rules of Procedure and Evidence.”[[7]](#footnote-7)
41. In the Panel’s view, the “primacy” of the ICTY’s jurisdiction is not absolute. Indeed, Rules 8 - 10 of the ICTY’s Rules of Procedure and Evidence [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.
42. The Panel is convinced that a formal request for information and cooperation or a request for deferral of proceedings must have been presented by the ICTY to national authorities. Thus, the ICTY must have presented such a request to UNMIK, before taking over the case, which would have been formally reflected in UNMIK’s documentation. This would, *first*, justify the lack of UNMIK’s authorities’ action with regard to particular investigations, and, *second*, it would enable future tracking and retrieving of the investigative documents and evidence by national authorities, when needed.
43. However, the investigative file made available to the Panel by UNMIK has no indication whatsoever of any ICTY involvement at any stage of the investigation by the UNMIK Police. Moreover, even in 2007, when the file was reviewed twice, the UNMIK Police WCIU, which was the main unit handling all war crimes investigations in Kosovo, appeared not to be aware of the existing ICTY proceedings. Likewise, in its submissions on the admissibility and the merits of this complaint, UNMIK neither attributed the lack of the UNMIK Police investigative action to the ICTY investigation, nor did it provide any evidence of such investigation.
44. The Panel notes these facts with great concern, as it appears that UNMIK’s investigative files might have been taken by the ICTY, without any formal request from the latter and without even any trace of such action. If this is the situation, it could seriously affect the possibility of tracking the documents and evidence in the case, as well as ensuring that those are the originals. Without a proper chain of custody of the investigative files, any future criminal proceedings, and subsequently the rights of interested parties, might be affected.
45. The Panel is likewise aware of the fact that, since its establishment, the ICTY has had a number of field offices in the former Yugoslavia, which were “originally set up as outposts for the [OTP] and were located in Belgrade, Sarajevo, Zagreb, Pristina, Banja Luka and Skopje. … In early 2000, a Registry component was added to the field offices of Sarajevo, Belgrade, Zagreb and Pristina, primarily to perform outreach and public information functions. The [OTP] withdrew its presence from the Pristina office in 2006 and from the Zagreb office in 2010.”[[8]](#footnote-8) Subsequently, on 31 December 2012, the ICTY OTP field office in Prishtinё/Priština was completely closed.[[9]](#footnote-9)
46. Thus, in the Panel’s view, it is not excluded that the ICTY had also conducted its independent investigation into the abduction and probable killing of Mr Memad Remištar, as a part of its wider investigation in the case *Haradinaj et al*. It is also possible that UNMIK authorities were not made aware of any such activity on the part of the ICTY OTP. This may explain the lack of information in the investigative file as to the ICTY involvement.
47. Although the Panel was not presented with any evidence as to when the ICTY assumed primacy over these investigations, it is known that on 4 March 2005, the ICTY OTP filed the first indictment in the case *Haradinaj et al* (IT-04-84-I), listing Mr Nenad Remištar as among the Serb detainees allegedly killed by the KLA at its headquarters in Jabllanicё/Jablanica. Therefore, it is clear that by March 2005 at the latest, the ICTY had assumed full control of these investigations.
48. It is also the Panel’s position that 29 November 2012, the date when the ICTY Trial Panel delivered its judgment after the re-trial in the case *Haradinaj et al* (IT-04-84bis-T), might reasonably be considered as the end of the ICTY judicial proceedings. None of the accused in the case IT-03-66 was found to be guilty of the abduction and probable killing of Mr Nenad Remištar by the KLA (see § 51 above).
49. The Panel is conscious of the fact that not all investigations lead to identification and successful prosecution of the perpetrator[s]. However, the Panel has also stated on many occasions that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result and that an investigation must be undertaken in a serious manner and not be a mere formality (see e.g. HRAP, *Mladenović*, opinion of 26 June 2014, §§ 192 – 194). Thus, the Panel considers that as neither the mortal remains of the victim have been located nor those responsible for his abduction and probable killing have been brought to justice, the procedural obligation under Article 2 of the ECHR was not discharged and should have been continued, although a long time had passed from the alleged crimes.
50. In this respect, the Panel recalls that the European Court of Human Rights, expressing its position on a similar matter, stated that “there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity (see ECtHR, *Brecknell v. the United Kingdom,* cited in § 100 above, at § 69).
51. In the Panel’s view, after the ICTY Trial Chamber’s decision in the re-trial, of November 2012, in accordance with the continuous obligation to investigate, the competence to do so should have been formally transferred back to EULEX, which on 9 December 2008 assumed full operational control in the area of the rule of law in Kosovo (see § 23 above). Then it would be for the EULEX authorities to use the means at their disposal to review the investigation to ensure that nothing had been overlooked, as well as to inform relatives regarding the progress of this investigation. However, the action of authorities, other than UNMIK, after December 2008 does fall outside the Panel’s jurisdiction (see §§ 57 - 59 above).
52. The Panel deeply regrets that the investigation and the judicial proceedings at the ICTY, as well as those conducted by UNMIK, have not to date been able to identify the persons responsible for the abduction and probable killing of Mr Nenad Remištar and bring them to justice. However, the Panel reiterates that the obligation to continue with the investigation in this case in accordance with the procedural requirements of Article 2 of the Convention still exists, although falling outside the jurisdiction of the Panel to consider further.

1. The Panel notes the SRSG’s statement that “the ICTY and its gratis teams autopsied as many bodies as possible with little or no identification work … [and] reburied [then] in locations still unknown to OMPF” (see § 68 above). The Panel expresses its serious concern at the ongoing suffering of the complainant, and of others in similar situations, due to the delay caused by this situation in determining the final location, identification and therefore return of the mortal remains of their relatives
2. Having considered all aspects of this case, the Panel concludes that, as far as this investigation is attributable to the UNMIK authorities, there has been no violation of Article 2, procedural limb, of the ECHR.
3. **Alleged violation of Article 3 of the ECHR**
4. The complainant states that the lack of information and uncertainty surrounding the abduction and probable killing of Mr Nenad Remištar caused mental suffering to her and her family. The Panel considers in this respect that the complainant invokes Article 3 of the ECHR prohibiting inhuman and degrading treatment.
5. **The scope of the Panel’s review**
6. 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 §§ 54 - 59 above).
7. 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 § 97 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 86 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).
8. 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).
9. **The Panel’s assessment**
10. The Panel recalls that it was established above that there was no failure in relation to the procedural obligation under Article 2 of the ECHR on the part of UNMIK.
11. The Panel further considers that, according to the findings above, during the period under the Panel’s jurisdiction, UNMIK’s responsibility with respect to all aspects of the procedural obligation under Article 2 of the ECHR was made subject to the primacy of the jurisdiction of the ICTY. The Panel therefore considers that the same is true with respect of the substantive obligation under Article 3 of the ECHR.
12. The Panel has no doubts as to the profound suffering caused by this situation to the complainant, who continues to live in an uncertainty about the fate of her husband. Nevertheless, given the particular circumstances of the case and having found no violation of the procedural element of Article 2 of the ECHR by UNMIK, the Panel considers for the same reasons that there has not been a violation of Article 3 of the ECHR on the part of UNMIK.

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN NO VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE IS NO NEED TO EXAMINE WHETHER THERE HAS BEEN A VIOLATION OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.**

 Andrey Antonov Marek Nowicki

 Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit

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

**CCR** - Case Continuation Report

**DOJ** - Department of Justice

**DPPO** - District Public Prosecutor’s Office

**ECHR** - European Convention on Human Rights

**ECtHR**- European Court of Human Rights

**EU** – European Union

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

**FRY** - Federal Republic of Yugoslavia

**HRAP** - Human Rights Advisory Panel

**HRC** - United Nation Human Rights Committee

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

**ICMP** - International Commission of Missing Persons

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

**ICTY** – UN International Criminal Tribunal for former Yugoslavia

**IP** - International Prosecutor

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

**KLA** - Kosovo Liberation Army

**MPU** - Missing Persons Unit

**NATO** - North Atlantic Treaty Organization

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

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

**OTP** - Office of the Prosecutor of the ICTY

**RFA** - ICTY OTP Request for Assistance

**RoP** - ICTY’s Rules of Procedure and Evidence

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

**UN** - United Nations

**UNHCR** - United Nations High Commissioner for Refugees

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

**VRIC** - Victim Recovery and Identification Commission

**WCIU** - War Crimes Investigation Unit

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
2. The references drawn upon by the Panel in setting out this general background include: OSCE, “As Seen, as Told”, Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, “Abductions and Disappearances of non-Albanians in Kosovo” (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos 71412/01 and78166/01, decision of 2 May 2007; International Commission on Missing Persons, “The Situation in Kosovo: a Stock Taking” (2010); data issued by the United Nations High Commissioner for Refugees, (available at [www.unhchr.org](http://www.unhchr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>). [↑](#footnote-ref-2)
3. The database of the ICRC [electronic source] is available at: http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx (accessed on 10 October 2014). [↑](#footnote-ref-3)
4. This database of the OMPF [electronic source] is not open to public. The Panel accessed it with regard to this case on 12 October 2014. [↑](#footnote-ref-4)
5. The database of the ICMP [electronic source] is available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp\_details&l=en (accessed on 10 October 2014). [↑](#footnote-ref-5)
6. The ICTY’s official webpage: http://www.icty.org (electronic source). [↑](#footnote-ref-6)
7. See: Statement by Carla Del Ponte Prosecutor of the International Criminal Tribunal for the Former Yugoslavia on the investigation and Prosecution of crimes committed in Kosovo, 29 September 1999 // ICTY webpage [electronic source] - http://www.icty.org/sid/7733 (accessed on 8 October 2014). [↑](#footnote-ref-7)
8. See: Tribunal closes field offices in Croatia and Kosovo // ICTY’s webpage [electronic source] - http://www.icty.org/sid/11180 (accessed on 8 October 2014). [↑](#footnote-ref-8)
9. See: Ibid. [↑](#footnote-ref-9)