

**OPINION**

**Date of adoption: 13 May 2015**

**Case No. 279/09**

**Momčilo VOŠTIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 13 May 2015,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, makes the following findings and recommendations:

1. PROCEEDINGS BEFORE THE PANEL
2. The complaint was introduced on 2 April 2009 and registered on 30 April 2009.
3. On 23 December 2009, the Panel requested further information from the complainant. On 18 October 2011 the complainant responded to the Panel’s request.
4. On 7 February 2012, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on admissibility.
5. On 16 March 2012, the SRSG provided UNMIK’s response.
6. On 10 May 2012, the Panel declared the complaint admissible.
7. On 17 May 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the matter.
8. On 12 February 2014, the SRSG provided UNMIK’s comments on the merits of the complaint, together with copies of additional investigative documents.
9. On 29 April 2015, the Panel requested UNMIK to confirm whether the disclosure of files concerning the case could be considered final.
10. On 6 May 2015, UNMIK confirmed to the Panel that all available relevant files have been disclosed.
11. THE FACTS

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

1. 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).
2. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a “Military Technical Agreement” by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.
3. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to “promote and protect human rights” in Kosovo in accordance with internationally recognised human rights standards.
4. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
5. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbians, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbians displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbians and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
6. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbians, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
7. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.
8. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.
9. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being “well-functioning” and “sustainable”.
10. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. 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.
11. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
12. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.

## Circumstances surrounding the abduction and disappearance of Mr Dragoljub Voštić

1. The complainant, Mr Momčilo Voštić, is the son of Mr Dragoljub Voštić.
2. The complainant states that Mr Dragoljub Voštić, was abducted near his house in Jelofc/Jelovac village, Klinë/Klina municipality, on 12 June 1998. Since that time his father’s whereabouts have remained unknown.
3. The complainant states that he reported the disappearance to the MUP office in Klinë/Klina, the ICRC, OSCE and UNMIK.
4. An ICRC tracing request for Mr Dragoljub Voštić remains open since 22 June 1998.[[3]](#footnote-3) Likewise, his name is included in the list of missing persons for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001, which was forwarded by the ICRC to UNMIK on 12 October 2001. The name of Mr Dragoljub Voštić also appears in the database compiled by the UNMIK OMPF.[[4]](#footnote-4) The entry in relation to Mr Dragoljub [Drago] Voštić in the online database maintained by the ICMP[[5]](#footnote-5) gives 20 June 1998 as his date of disappearance and states in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.

## The investigation

### *Disclosure of relevant files*

1. In the present case, the Panel received from UNMIK copies of the investigative documents previously held by the OMPF and UNMIK Police. When presenting UNMIK’s comments on the merits to the Panel, on 12 February 2014, the SRSG stated that more information in relation to this case, not contained in the presented documents, may exist. Nevertheless, on 6 May 2015, UNMIK confirmed to the Panel that no more relevant documents have been obtained.
2. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made them available 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 investigation steps taken by investigative authorities is provided in the paragraphs to follow.

### *The OMPF file*

1. The OMPF file contains an undated ICRC Victim Identification Form for Mr Dragoljub Voštić, completed in handwriting (in Serbian) by the ICRC between 1 July and 20 September 2001 (see § 25 above); the form is cross-referenced to the MPU case no. 2002-000464 and ICRC case no. BLG-802980. Besides recording Mr Dragoljub Voštić’s personal details and ante-mortem description, it provides the names and full contact details of one of his sons, Mr Ra.V., in Serbia proper. It also states that Mr Dragoljub Voštić was abducted with his brother, Mr R.V., on 20 June 1998, while working in their field. An English translation of the form is also attached to the file.
2. The file contains a memorandum from the MPU Belgrade office, dated 22 December 2001, that states that the ICRC has sent to MPU Belgrade office a “list of 75 missing persons whose Ante Mortem data have been submitted to the office of the Head of the Coordination Center for Kosovo and Metohia.” A list of names is attached to the letter which includes the name, date of birth and an ICRC reference number for Mr Dragoljub Voštić.
3. The file also contains an MPU Case Continuation Report for file no. 2002-000464 in relation to Mr Dragoljub Voštić. There are two entries in the report, dated 19 May 2002, which state “DB Input – OK” and “DVI Input – OK.”
4. A printout from the MPU database, dated 12 January 2005, and referenced to the cases nos 4608 and 2002-000464, in relation to Mr Dragoljub Voštić’s abduction, contains basic biographical data of Mr Dragoljub Voštić. In the field titled “modus” it states “[missing person] was abducted at noon hours while working in the field together with his brother [R.V.]”
5. The investigative file also contains a document labelled “War Crime Unit MPU Anti Mortem Investigation Report”, started and completed on 12 January 2005, affixed with the MPU file no. 2002-000464 and cross-referenced with the WCIU file no. 0145/INV/05. The Report lists Mr Dragoljub Voštić as a missing person with the date of disappearance as 20 June 1998, and it lists his son, Mr Ra.V. as a witness.
6. Under the heading labelled “Nature of Information”, the Report states “[Missing Person] was taken together with his brother [R.V.]. 30 minutes before the event he was talking with Albanian neighbours in Jelovac village of Klina municipality. This case was reported to ICRC Belgrade under number BLG-802980-01 and MPU file was open on 19/05/2002.” Under the heading labelled “Further Information”, the Report states “We contacted by phone with [missing person’s] son [Mr. Ra.V.] who confirmed already given statement, but didn’t give us any updated information.” The report also states that the investigators were informed that Mr Dragoljub Voštić has another son, the complainant, and provided his contact details.
7. Under the heading “statement of witness”, the Report repeats the information described in the “Nature of Information” and adds “[witness] suspects Albanian neighbours in participation of kidnapping. [Missing person’s] fate is unknown.” The field labelled “Conclusion” states “No information leading to a possible [missing person’s] location. This case should remain open inactive within the WCIU.”
8. The file further contains another printout from the MPU database, dated 13 January 2005, referenced to the cases nos 0145/INV/05, 2002-000464 and BLG-802980-01. The document includes the name of Mr Dragoljub Voštić. The field labelled “Request Summary” states “No new information could be collected”. The field labelled “Invest. notes” states “Pending.”

*The UNMIK Police investigative file*

1. The file further contains an internal memorandum from an intelligence analyst of the International Criminal Tribunal for the former Yugoslavia (ICTY), dated 13 November 2000, entitled “Analysis on KLA Detention Facilities”. It provides a detailed overview of the information possessed by the ICTY related to a KLA detention facility in Likovc/Likovac, Skenderaj/Srbica municipality and acknowledges the existence of five other similar facilities run by the KLA in the area. Among many other facts, names, locations and events, it refers to the detention of Mr Dragoljub Voštić and his brother, [Mr R.V.], at the detention facility in Likovc/Likovac in June 1998; the source of the information is mentioned in the document.
2. This document also indicates that S.L., a KLA member, is suspected to have been the “director” of the “KLA prison in Likovac”, and a deputy to S.S., the KLA commander of the “Drenica Operational Zone”. It further provides a list of “potential targets”, which includes S.S., S.L. and five other former KLA commanders, as well as a chart of the KLA command structures in the “Drenica Operational Zone”.
3. Under the field titled “Hypothesis” the document states “the KLA where its 114th brigade was present resumed in an organized campaign of targeting Serbs, Romas and Albanians considered being as “collaborators” with the Serbian regime. These minorities and “collaborators” were subject of forced expulsion, robbery, illegal detention (kidnapping), imprisonment, in some cases had to be performed forced labour, beaten and murdered. The KLA set a detention facility (prison) in Likovac where civilians and police officers were kept under illegal detention, in some cases force to work, beaten and killed.”
4. THE COMPLAINT
5. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and disappearance of his father. In this regard the Panel deems that the complainant invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
6. He also complains about the mental pain and suffering allegedly caused to himself and his family by this situation. In this regard the Panel deems that the complainant relies on Article 3 of the ECHR.
7. THE LAW

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

### The scope of the Panel’s review

1. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
2. The Panel notes that the victim in this case was abducted and subsequently disappeared during the armed conflict in Kosovo to which the principles of International Humanitarian Law are applicable. However, the Panel’s jurisdiction is limited to complaints related to an alleged violation of human rights as defined by UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel. Accordingly, the Panel draws no conclusions about responsibilities under International Humanitarian Law.

1. In determining whether it considers that there has been a violation of Article 2 (procedural limb) of the ECHR, the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.

1. The Panel notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, [the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf), the Convention on the Rights of the Child.
2. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainant complains about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
3. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above. In cases of killings and disappearances in life threatening circumstances, it is not the Panel’s role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.
4. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights “that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).

### The Parties’ submissions

1. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of his father. The complainant also states that he was not informed as to whether an investigation was conducted at all and what the outcome was.
2. The SRSG does not dispute that Mr Dragoljub Voštić disappeared in life threatening circumstances, but recalls that it had taken place before UNMIK’s arrival in Kosovo, while the administration of this territory was still exercised by the “Federal and Yugoslav (*sic*) authorities”. The SRSG notes in this respect that until 11 June 1999, it was for those authorities to investigate the matter. In June 1998, when his disappearance occurred, an armed conflict was ongoing in Kosovo and due to that “the security situation in Kosovo was extremely tense, and there was a high level of violence all over Kosovo.”
3. The SRSG continues that in June 1999, after the establishment of UNMIK, “the security situation … remained tense. KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order, and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.” Citing the UN Secretary-General’s report to the United Nations Security Council of 12 July 1999, the SRSG describes the situation as follows:

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

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

1. The SRSG does not dispute that since its establishment UNMIK assumed the responsibility to conduct an effective investigation into the disappearance of Mr Dragoljub Voštić in accordance with the procedural standards under Article 2 of the ECHR. In the words of the SRSG, “the essential purpose of such investigation [was] to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 *On the Authority of the Interim Administration in Kosovo* of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 *On the Law Applicable in Kosovo* of 12 December 1999, as amended.”
2. The SRSG considers that such an obligation is 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.”
3. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment 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.”

1. In the view of the SRSG, from 1999 to 2008 UNMIK was faced with a similar situation in Kosovo, as the one in Bosnia and Herzegovina, from 1995 to 2005. Many of those persons who were unaccounted for were abducted, killed and buried in unmarked graves inside or outside Kosovo, or had their mortal remains moved and buried outside Kosovo, which made locating and recovering their mortal remains very difficult.
2. The SRSG further underlines that in June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing. However its work was faced with many challenges at the beginning of the operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština.
3. The SRSG continues in this regard that: “Even more serious that the shortfall of the forensic standards was the lack of attention paid to the humanitarian agenda of identifying bodies and restituting their remains […]. In a focused effort to demonstrate that crimes were systematic and widespread, ICTY and its gratis teams autopsied as many bodies as possible with little or no identification work. ICTY reports that it exhumed 4019 bodies in 1999 and 2000, less than half of which were identified; furthermore, some of the unidentified bodies exhumed in 1999 by gratis teams were reburied in locations still unknown to OMPF.” After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “*ex-officio*, without any broader prosecutorial strategy”. As a consequence, a large amount of unstructured information was collected.
4. The SRSG states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is “testament to the vigour of its work between 2002-2008” and that “more bodies have been 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 the Kosovo context, and this principle has been reflected in the *Palić* case abovementioned.” 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 further argues that fundamental to conducting effective investigations “is a professional, well trained and well resourced police force … [which] did not exist in Kosovo in 1999 and had to be established from scratch and progressively developed.”
6. The SRSG continues that, following Yugoslavia’s complete withdrawal of all military, police and paramilitary forces from Kosovo, there appeared a “complete policing vacuum”. In this situation, UNMIK had to build a new Kosovo Police Service, a long and challenging task, which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

“UNMIK Police had to deal with in the aftermath of war, with dead bodies and the looted and burned houses. Ethnic violence flared through illegal evictions, forcible takeovers of properties, the burning of houses and physical violence against communities all over Kosovo. Tempers and tensions were running high amongst all ethnic groups, exacerbated by reports of missing and dead persons. It became imperative for UNMIK Police to establish order and to quickly construct a framework to register and investigate crimes.

All of this had to be done with limited physical and human resources. Being the first executive mission in the history of the UN, the concept, planning and implementation was being developed on the ground. With 20 different contributory nationalities at the beginning, it was a very challenging task for police managers to establish common practices for optimum results in a high-risk environment.”

1. The SRSG states that UNMIK 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. He further states that 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 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.
2. With regard to this particular case, the SRSG addresses the investigation aimed at identifying and bringing the perpetrators to justice and asserts that “from the records available, the UNMIK opened a missing persons file for Mr. Dragoljub Voštić on 19 May 2002, on the basis of information provided by the [the complainant’s] brother [Mr Ra.V.].” He states that the ante mortem investigation report issued by UNMIK WCIU on 12 January 2005 indicated that UNMIK Police did commence investigations into the matter and “made contacts with the Complainant’s brother to update the information and investigated further. However, no new information was found to assist in either the arrest of the perpetrators, or locating the missing person’s whereabouts.”
3. The SRSG adds “[t]he very limited investigation files available to UNMIK are not conclusive and reveal an overall dearth of information.”

1. The SRSG argues that no violation of the procedural requirements of Article 2 of the ECHR may be attributed to UNMIK in this case “regarding the disappearance and possible death of Mr. Dragoljub Voštić”.
2. The SRSG also informed the Panel that he might make further comments on this matter, “[a]s there is the possibility that additional and conclusive information exists”, beyond the presented documents. However, no further communication in this regard, other than the confirmation of the full disclosure of the investigative files, has been received to date.

### The Panel’s assessment

1. 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 Mr Dragoljub Voštić’s abduction and disappearance.

#### Submission of relevant files

1. At Panel’s request, on 12 February 2014, the SRSG provided copies of the documents related to this investigation, which UNMIK was able to recover. As mentioned above (§ 64), the SRSG also noted that more information, not contained in the presented documents, may exist in relation to this case. Nevertheless, on 6 May 2015, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 9 above).
2. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005*,* § 56).
3. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2 (see HRAP, *Bulatović*, no. 166/09, opinion of 13 November 2014, § 62).
4. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative documents. However, UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
5. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaint on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of 15 March 2011, § 146).

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

1. The Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights (IACtHR) *Velásquez-Rodríguez* (see IACtHR, *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The positive obligation has also been stated by the United Nations Human Rights Committee (HRC) as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Articles 2 (3) (right to an effective remedy) of the ICCPR (see United Nations Human Rights Committee (HRC), General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (UN Document A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.
2. In order to address the complainant’s allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
3. The European Court has also stated that the procedural obligation to provide some form of effective official investigation exists also when an individual has gone missing in life-threatening circumstances and is not confined to cases where it is apparent that the disappearance was caused by an agent of the State (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 47 above, at § 136); ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, §317).
4. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310; see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210; ECtHR [GC], *Mocanu and Others v. Romania*, cited above, §321).
5. Setting out the standards of an effective investigation, the Court has stated that besides being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC]*, Varnava and Others v. Turkey*, cited in § 47 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, § 312; and *Isayeva v. Russia*, cited above, § 212).
6. In particular, the investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the investigation’s ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 72 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazărev. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation. (see ECtHR [GC], *El-Masri v. “the former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 73 above, at § 322).
7. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECHR 2002‑II); ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 73 above**,** at § 317).
8. The European Court has also stressed that “The requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow offences concerning violent deaths to go unpunished” (ECtHR, *Jelić v. Croatia*, no. 57856/11, judgment of 12 June 2014, § 77).
9. Specifically with regard to persons disappeared and later found dead, which is not the situation in the present 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 § 75 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 47 above, at § 148, *Aslakhanova and Others v. Russia*, nos. 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation “does not come to an end even on discovery of the body ... This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 64).
10. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim’s next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Ahmet Özkan and Others*, cited in § 74 above, at §§ 311 - 314; ECtHR, *Isayeva v. Russia*, cited in § 74 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 73 above, at § 324).
11. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. “the former Yugoslav Republic of Macedonia” cited in* § 76 above; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also HRC, *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 71 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives, UN Document A/HRC/22/52, 1 March 2013, § 23-26).

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

1. The Panel is conscious that Mr Dragoljub Voštić was abducted and disappeared around a year prior to the deployment of UNMIK in Kosovo, during the armed conflict, when crime, violence and insecurity were rife.
2. On his part, the SRSG does not contest that from its deployment in Kosovo in June 1999 UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK’s deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
3. The Panel considers that this raises two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, second, whether such standards shall be considered fully applicable to UNMIK.
4. As regards the applicability of Article 2 to UNMIK, the Panel recalls that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under certain international human rights instruments, including the ECHR. In this respect, the Panel has already found that it is true that UNMIK’s interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK’s mandate (see HRAP, *Milogorić and Others,* nos. 38/08 and others, opinion of 24 March 2011, § 44; *Berisha and Others,* nos. 27/08 and others, opinion of 23 February 2011, § 25; *Lalić and Others*, nos. 09/08 and others, opinion of 9 June 2012, § 22).
5. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court of Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 75 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 § 80 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 § 74 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 74 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
6. The Court has acknowledged that “where the death [and disappearances] to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and […] concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, §164; ECtHR, *Bazorkina v. Russia*, no.69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 72 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
7. Similarly, the HRC has held that the right to life, including its procedural guarantees, shall be considered as the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (see HRC, General Comment No. 6, cited above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russi*a*n Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
8. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 17 above).
9. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel thus agrees with the SRSG that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
10. Lastly, in response to the SRSG’s objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 75 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
11. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel’s jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight; failure to provide family members with minimum necessary information on the status of the investigation (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 79 above, at § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK’s failures, which persisted throughout the period of the Panel’s jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.

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

1. Turning to the circumstances of the present case, the Panel, first, recalls that Mr Dragoljub Voštić was abducted and subsequently disappeared on 12 June 1998, a year prior to the deployment of UNMIK in Kosovo. Thus, until 11 June 1999, it was for the Yugoslav and Serbian authorities to investigate this matter, while after that time the responsibility to conduct this investigation was assumed by UNMIK. This is not disputed by the SRSG (see §§ 49 - 51 above). In this respect, the Panel recalls that by October 2001 at the latest, UNMIK was made aware of Mr Dragoljub Voštić’s abduction and disappearance and started an investigation (see § 28 and 30 above).
2. The Panel notes in this regard that according to the 2000 Annual Report of UNMIK Police, the complete executive policing powers in the Pejë/Peć region, including criminal investigations, were under the full control of UNMIK Police from June 2000. Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority assuming responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
3. As Mr Dragoljub Voštić was abducted in obviously life threatening circumstances, which is also not disputed by the SRSG (see § 49 above), it was UNMIK’s responsibility to investigate this matter. Therefore, UNMIK Police had to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority assuming responsibility for investigation (EULEX, see § 20 above); and *third*, that the investigative files could be traced and retrieved, should a need arise at any later stage.
4. The purpose of this investigation was to discover the truth about the events leading to the disappearance of the complainant’s father, to establish his fate and to identify the perpetrators. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
5. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim’s family. The investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation’s effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 75 - 76 above).
6. Having noted the SRSG’s assertion that the file submitted to the Panel may be incomplete, and the lack of further explanation in relation to this (see § 64, 66 and 69 above), the Panel assumes that UNMIK cannot guarantee whether the file presented to the Panel is complete or not. In case it is not complete, it would indicate that one of the following situations may have occurred: no proper investigation was carried out; the file was not accurately and fully handed over to EULEX; or UNMIK failed to retrieve the complete file from the current custodian. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the complete investigative file for its review (see § 69 above). However, the Panel considers that whichever of these potential explanations is applicable, it would indicate a failure directly attributable to UNMIK, either when it was exercising its executive functions or in its current capacity.
7. The Panel further notes that there were obvious shortcomings in the conduct of the investigation from its inception by UNMIK Police. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 47 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period from after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 75 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see § 20 above).
8. With regard to the first part of the procedural obligation, that is locating the mortal remains of Mr Dragoljub Voštić, the Panel notes that his whereabouts remain unknown. According to the information available to the Panel, his ante-mortem details had been gathered by the ICRC, between 1 June and 20 September 2001. As the ICMP database entry confirms, the necessary DNA samples had been collected, although it is not known when and by whom (see § 25 above).
9. In this respect, the Panel notes that the collection of the DNA samples is of itself an essential action that secures the necessary material for any future comparative examination and possible identification of located mortal remains. However, as in this case no such identification has yet occurred, the Panel will turn to the investigation carried out by UNMIK Police with the aim of identification of perpetrators and bringing them to justice, that is the second element of the procedural obligation under Article 2 of the ECHR.
10. As already mentioned above, the investigative file reflects that by May 2002, an investigation into the disappearance of Mr Dragoljub Voštić had been opened (see § 30 above). By this time UNMIK Police possessed some information, including a very basic description of the disappearance of Mr Dragoljub Voštić as well as the name, address and telephone number of his son, Mr Ra.V., in Serbia proper (see § 28 above).
11. It does not appear that any basic investigative steps were taken by the UNMIK Police, such as visiting the location where Mr Dragoljub Voštić had been reportedly seen for the last time, or his house, in order to try and better understand the circumstances of his disappearance, or identifying and interviewing individuals residing at or located in the area of the alleged crime (“canvassing” the area). Although there is information that he was speaking with some neighbours prior to being kidnapped, the file reflects no attempt to identify and contact them.
12. The file contains a memorandum by the ICTY, dated 13 November 2000, with an overview of the available information in relation to a number of KLA-run detention centres in Kosovo, as well as the KLA command structure in the “Drenica Operational Zone” and the list of “potential targets” (see §§ 36 -37). As well as other data, this document includes information on the KLA detention centre in Likovc/Likovac village of Skenderaj/Srbica municipality, where Mr Dragoljub Voštić was allegedly detained after his abduction (see §§ 36 and 38 above). However, the file does not indicate when this memorandum was made available to UNMIK Police. Likewise, it is not clear how, or if at all, this information was considered by UNMIK Police and whether there was any follow-up action on it.
13. Even with this information, it does not appear from the file that UNMIK Police attempted to locate and interview any of the possible suspects with respect to the KLA-run detention centre Likovc/Likovac.
14. Furthermore, there is no evidence that UNMIK Police attempted to locate and interview the complainant, whose contact details were obtained by investigators. Likewise, the Panel notes that there is no evidence in the file that UNMIK tried to connect the investigation into Mr Dragoljub Voštić disappearance with the disappearances of his brother, Mr. R.V., who was kidnapped with him (see §§ 31 and 33 above).
15. The Panel further takes note that only in 2005 the MPU reviewed the file (see § 32 above), but again undertook no substantive investigative action. Instead of recommending action to collect additional information, the investigator recommended that “[t]his case should remain open inactive with the WCU”. The Panel notes that this review does not show much further information about Mr Dragoljub Voštić’s disappearance than what UNMIK MPU knew about the case in 2002; it does not appear that WCIU had accomplished much, if anything, during its investigation since that time.
16. The Panel recalls in this respect its assessment in relation to the categorisation of cases into “active” and “inactive”, that any “categorisation of an investigation should take place only after the minimum possible investigative actions have been undertaken and obtainable information has been collected and analysed”. The Panel also reiterates its position expressed in other cases in relation to the adequacy of the investigation into the abductions, disappearances, killings and suspicious deaths that no prioritisation should be made at the earliest stages, before any basic investigative steps towards collection of additional information is taken and all obtainable evidence had been collected (see e.g. HRAP, *B.A*., no. 52/09, opinion of 14 February 2013, § 82; HRAP, *Janković*, no. 249/09, opinion of 16 October 2014, § 107).
17. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after that critical date the failure to conduct the necessary investigative actions, including those at the initial stage, persisted. Accordingly, inadequacies existing up until that date were not addressed. Thus, in accordance with the continuing obligation to investigate (see § 79 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
18. In this respect the Panel notes that the file does not reflect any action by UNMIK Police on this case undertaken in the period within the Panel’s temporal jurisdiction.

1. As the complainant and his brother, Mr Ra.V., had moved to Serbia proper, the Panel recalls the general need to take into account the special vulnerability of displaced persons in post-conflict situations (see § 89 above). Thus, in the Panel’s view, it was for UNMIK to reach out to them, and not for them to come back to Kosovo, from where they had left for security reasons, to try to find out what had happened to their father or to the investigation (see HRAP, *Buljević*, case no. 146/09, opinion of 13 December 2013, § 100).
2. The Panel is conscious of the fact that not all crimes can be solved and not all investigations lead to identification and successful prosecution of the perpetrator[s]. The Panel has already referred above to the position of the European Court with regard to the nature of the procedural obligation under Article 2, which is “not an obligation of results but of means.” The Court clearly states that no violation of Article 2 exists if the authorities take all reasonable steps they can to secure the evidence concerning an incident and the investigation’s conclusion is based on thorough, objective and impartial analysis of all relevant elements (see §§ 75 - 76 above), even when no perpetrators are convicted (see e.g. ECtHR case *Palić*, cited in § 75 above, at § 65, or ECtHR [GC], *Giuliani and Gaggio v. Italy*, no 23458/02, judgment of 24 March 2011, §§ 301 and 326). In this respect, the Panel also recalls the position of the European Court that “the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation” (ECtHR [GC], *El-Masri v. “the former Yugoslav Republic of Macedonia”*, cited in § 76 above, at § 322). However, in this case, before even any minimum substantive action was undertaken and any information collected, the investigation was categorised as “inactive” and subsequently remained without any action for the years to come.
3. The Panel further reiterates its previously expressed view that any investigation at its initial stage lacks a more or less significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. In this case, however, it appears that, instead of actively searching for information and leads, UNMIK Police simply waited for further information to appear by itself. In this situation it may have led to the loss of potential evidence (see e.g. HRAP, *P.S*., no. 48/09, opinion of 31 October 2013, § 107, HRAP, *Stevanović*, no. 289/09, opinion of 14 December 2014, § 111).
4. As the fate of Mr Dragoljub Voštić had not been established and those responsible for his abduction and disappearance had not been identified, UNMIK Police was obliged to use the means at their disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform his relatives regarding the progress of this investigation. As the file shows, the investigative file was reviewed once, in 2005. Although that review showed that no investigation had been conducted and there were obvious lines of inquiry to be followed, no further action was undertaken on this case by UNMIK authorities (see §§ 106 - 107 above). In particular, no review took place at the period within the Panel’s Jurisdiction.
5. Also in this regard the Panel observes that the file indicates no involvement of a public prosecutor in this investigation during the time it was under UNMIK’s authority. In any event, as the Panel has mentioned previously, a proper prosecutorial review of the investigative file might have resulted in additional recommendations, so that the case would not have remained inactive for years to come (see HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 160; HRAP, *Buljević*, cited in § 111 above, at § 120). Thus, in the Panel’s view, the review of the investigative files was far from adequate.
6. 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).
7. In this respect, the Panel recalls that the European Court of Human Rights 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” (ECtHR, *Brecknell v. the United Kingdom,* cited in § 91 above, at § 69). It also recalls that the ECtHR stressed that the effective investigation should cover “not only those having the command responsibility but direct perpetrators as well in order to prevent any appearance of tolerance of or collusion in unlawful acts” (ECtHR, *Jelić v. Croatia*, cited in § 78 above, at § 94).
8. The apparent lack of any reaction from UNMIK authorities, in **the absence of information about the investigation into the matter by the ICTY,** either immediately or at later stages, may have suggested to perpetrators that the authorities were either not able, or not willing to conduct investigations into disappearances of people. Such an attitude of the authorities towards the gravest crimes in any society, especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
9. Certainly, in the Panel’s view, such inaction did not help UNMIK to defuse the “[t]empers and tensions … running high amongst all ethnic groups, exacerbated by reports of missing and dead persons”, mentioned by the SRSG (see § 59 above). In addition, the Panel fears that such inaction indicates certain reluctance on the part of UNMIK Police to pursue the investigations when there were indications of ethnically motivated violence pointing towards persons associated with the KLA (see HRAP, *Nikolić et al,* nos 72/09 et al, opinion of 14 December 2014, § 203).
10. Having regard to all the circumstances of the particular case, the Panel considers that not all reasonable steps were taken by UNMIK towards identifying the perpetrators and bringing them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 75 above), as required by Article 2 of the ECHR.
11. The Panel considers that the case of Mr Dragoljub Voštić, as well as other cases of abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into disappearances in Kosovo (see § 92 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 88 above, at § 11.4; see also HRAP, *Bulatović*, sited in § 68 above, at §§ 85 and 101).
12. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victims’ next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.

1. The investigative file shows only one contact between UNMIK authorities and Mr Momčilo Voštić (see § 33 above). Moreover, neither he nor his family were ever informed of the progress or of the outcome and the final status of the investigation. Thus, the Panel considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR (see, *a contrario*, ECtHR [GC], *Mustafa Tunç and Fecire Tunç v. Turkey*, no. 24014/05, judgment of 14 April 2015, §§ 210 - 216).
2. Therefore, considering all stated above, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and disappearance of Mr Dragoljub Voštić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.

## Alleged violation of Article 3 of the ECHR

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

### The scope of the Panel’s review

1. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 41 - 47 above).
2. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, “the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 87 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 75 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41). “It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct” (see, among others, ECtHR, *Er and Others v. Turkey*, no. 23016/04, judgment of 31 July 2012, § 94).
3. Lastly, where mental suffering caused by the authorities’ reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, §§ 147 - 148).

### The Parties’ submissions

1. The complainant alleges that the lack of information and certainty surrounding the abduction and disappearance of Mr Dragoljub Voštić’s, particularly because of UNMIK’s failure to properly investigate it, caused mental suffering to him and his family.
2. The Panel notes the proximity of the family ties between the complainant and Mr Dragoljub Voštić, as the latter is the complainant’s father.
3. The SRSG states that “[t]here is no documentation on record to indicate that [the complainant] or any other close relative made inquiries with KFOR and UNMIK following their establishment in June 1999 in connection with their father’s death” and that the only enquiry was made by his son, Mr Ra.V., four years after the abduction.
4. The SRSG continues in this respect that “there are no allegations … of any bad faith on the part of UNMIK personnel involved with the matter, nor of any action by UNMIK that would have evidenced any disregard for the seriousness of the matter or the emotions of the Complainant emanating from the continued missing status of his father.” Furthermore, he stresses that “there is no documentation or claim that UNMIK acted inappropriately or with an attitude of the type required for a finding of a violation of Article 3, ECHR.”
5. Although the SRSG does not doubt that he suffered “understandable and apparent mental anguish and suffering”, he stresses that it cannot be attributed to UNMIK as it is “rather a result of the inherent that results from the disappearance of a close family member.”
6. Therefore, the SRSG rejects this part of the complaint.

### The Panel’s assessment

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

1. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (see ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
2. Setting out the general principles applicable to situations where violations of the obligation under Article 3 of the ECHR are alleged, the Panel notes that the phenomenon of disappearance constitutes a complex form of human rights violation that must be understood and confronted in an integral fashion (see IACtHR, *Velásquez-Rodríguez v. Honduras*, cited in § 71 above, at § 150).
3. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died.
4. The HRC has also recognised disappearances as a serious violation of human rights. In its decision of 21 July 1983, in the case *Quinteros v. Urugay*, it stated that disappearances constitute serious violations of the rights of the disappeared person’s relatives, who suffer from deep anguish which persists for as long as the uncertainty concerning the fate of their loved one continues, often for many years (see HRC, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990), § 14). Moreover, in its decision of 15 July 1994 in the case *Mojica v. Dominican Republic*, the HRC has deemed that “the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 [of the Covenant]”, also prohibiting torture, inhumane or degrading treatment and punishment (see HRC, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).
5. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (ECtHR, *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Er and Others v. Turkey*, cited in § 127 above, at § 94).
6. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey,* cited above, § 96; ECtHR, *Osmanoğlu v. Turkey,* no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine,* no. 28005/08, judgment of 14 March 2013, § 201).
7. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya,* Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v Algeria,* views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007, *Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the case *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (…), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have led to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Abubakar Amirov and Aïzan Amirova v. Russi*a*n Federation*, cited in § 88 above, at § 11.7).
8. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts; on the contrary, in the Court’s view, an assessment of the way in which the authorities of the respondent State reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v. Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
9. In this respect, it is the position of the European Court that findings under the procedural limb of Article 2 would also be of direct relevance in considering the existence of a violation of Article 3 (see ECtHR, *Basayeva and Others v. Russia*, cited in § 139 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 128 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 87 above, at § 140).
10. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117 - 118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107 - 110). However, in contrast, in the case under the Panel’s consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant’s mental distress caused by the commission of the crime itself.
11. The Panel is mindful that in the absence of a finding of State responsibility for the disappearance, the European Court has ruled that it is not persuaded that the authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity, which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among others, ECtHR, *Tovsultanova v. Russia*, no. 26974/06, judgment of 17 June 2010, § 104; ECtHR, *Shafiyeva v. Russia*, no. 49379/09, judgment of 3 May 2012, § 103).

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

1. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 82 - 91 above).
2. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 18 above).
3. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaint before it, considering the particular circumstances of the case.
4. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.

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

1. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 3 of the ECHR.
2. The Panel notes the proximity of the family ties between the complainant and Mr Dragoljub Voštić who is his father.
3. The Panel recalls the failure established above in relation to the procedural obligation under Article 2, despite the fact that UNMIK Police had the minimum necessary information to pursue investigation from the outset. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety.
4. In this respect, the Panel also recalls that, although his contact details had been provided to UNMIK by 2005 (see § 33 above), the complainant has never heard anything from any of the UNMIK authorities in relation to his father’s abduction and disappearance. In this respect, the Panel also recalls its view that the obligation was on UNMIK to reach out to him, and not otherwise (see § 111 above).
5. In view of the above, the Panel concludes that the complainant has suffered severe distress and anguish for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with the case and as a result of his inability to find out what happened to his father. In this respect, it is obvious that, in any situation, the pain of a son who has lived and continues living in complete uncertainty about the fate of his father must be unbearable.
6. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the complainant’s distress and mental suffering in violation of Article 3 of the ECHR.
7. CONCLUDING COMMENTS AND RECOMMENDATIONS
8. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
9. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate the abduction and disappearance of Mr Dragoljub Voštić, and that its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
10. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s mission, made compliance with UNMIK’s human rights obligations difficult to achieve.
11. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 20 above), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008, and subsequently the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
12. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

* In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, cited in § 135 above, at § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it vis-à-vis competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and disappearance of Mr Dragoljub Voštić will be established and that the possible perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
* Publicly acknowledges, including through media, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the abduction and disappearance of Mr Dragoljub Voštić, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainant and his family in this regard;
* Takes appropriate steps towards payment of adequate compensation to the complainant for the moral damage suffered due to UNMIK’s failure to conduct an effective investigation, as well as for the distress and mental suffering incurred by him as a consequence of UNMIK’s behaviour.

**The Panel also considers appropriate that UNMIK:**

* In line with the UN General Assembly Resolution on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/Res/60/147, 21 March 2006), takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme, including restitution compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict;
* Takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring.

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF Mr Dragoljub Voštić, IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH MEDIA, RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF Mr Dragoljub Voštić, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT AND HIS FAMILY;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR;**
7. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
8. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
9. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

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

**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** - International Criminal Tribunal for former Yugoslavia

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

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

**MoU -** Memorandum of Understanding

**MP** - Missing Person

**MPU** - Missing Persons Unit

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

**NATO** - North Atlantic Treaty Organization

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

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

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

**SPRK** - Kosovo Special Prosecution Office

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

**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 ICRC database is an electronic source available at: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 4 May 2015). [↑](#footnote-ref-3)
4. The OMPF database is an electronic source not open to public. The Panel accessed it with regard to this case on 4 May 2015. [↑](#footnote-ref-4)
5. The ICMP database is available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 4 May 2015). [↑](#footnote-ref-5)