

**OPINION**

**Date of adoption: 26 June 2014**

**Cases Nos 291/09, 292/09 and 296/09**

**L.V., M.Đ. and D.S.**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 26 June 2014,

with the following members taking part:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

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

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaints of L.V. (case no. 291/09) and M.Đ. (case no. 292/09) were introduced on 24 April 2009 and registered on 15 May 2009. The complaint of D.S. (case no. 296/09) was introduced on 29 May 2009 and registered on 2 June 2009.
3. On 23 December 2009, the Panel requested the complainant in case no. 292/09 to provide additional information. No response was received.
4. On 9 September 2010, the Panel decided to join case no. 291/09 and case no. 292/09 pursuant to Rule 20 of the Panel’s Rules of Procedure.
5. On 29 September 2010, the Panel requested additional information to the complainant in case no. 296/09. No response was received.
6. On 6 October 2010, the Panel submitted a request for further information to the complainants in cases nos 291/09 and 292/09. On 24 November 2010, the Panel reiterated its request for additional information to the complainant in case no. 292/09. However, no response was received.
7. On 4 March 2011, the Panel asked the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1) whether UNMIK could comment on information published in the media, which could have some bearing on the case. The SRSG submitted UNMIK’s response on 24 March 2011.
8. On 19 April 2011, the Panel communicated cases nos 291/09 and 292/09 and case no. 296/09 to the SRSG for UNMIK’s comments on their admissibility.
9. On 31 May 2011, the SRSG submitted UNMIK’s response with respect to cases nos 291/09 and 292/09. On 29 July 2011, the SRSG submitted UNMIK’s response with respect to case no. 296/09.
10. On 16 December 2011, the Panel declared case no. 296/09 admissible. On 19 December 2011, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of all police, forensic and other investigative files relied upon by UNMIK in preparation of its response. The SRSG provided UNMIK’s response with respect to case no. 296/09 on 5 March 2012.
11. On 26 September 2012, the Panel declared cases nos 291/09 and 292/09 admissible. On 15 October 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaints, as well as copies of all police, forensic and other investigative files relied upon by UNMIK in preparation of its response.
12. Following the Panel’s inquiries, on 4 October 2012, UNMIK requested the Archives and Records Management Section of the United Nations’ (UN) Headquarters in New York to locate and return to UNMIK a number of investigative files related to the complaints before the HRAP.
13. On 14 December 2012, UNMIK received the requested investigative files from the UN Headquarters in New York. On 17 December 2012, UNMIK presented those documents, including the files related to these complaints, to the Panel.
14. On 22 April 2014, the Panel the Panel decided to join the three complaints pursuant to Rule 20 of the Panel’s Rules of Procedure.
15. On 23 April 2014, the Panel communicated its decision to join the cases to the SRSG and invited UNMIK’s comments on the merits of the three cases, also in light of the joinder decision. On 20 May 2014, the SRSG provided UNMIK’s response.
16. On 2 June 2014, the Panel requested UNMIK to confirm that the disclosure of files concerning the case could be considered final. On 6 June 2014, the SRSG provided UNMIK’s response.
17. On 4 June 2014, the Panel requested additional clarifications from EULEX, which responded on 5 June 2014.
18. **THE FACTS**
19. **General background[[2]](#footnote-2)**
20. The events at issue took place in the territory of Kosovo shortly after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
21. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a “Military Technical Agreement” by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.
22. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to “promote and protect human rights” in Kosovo in accordance with internationally recognised human rights standards.
23. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
24. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbs, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
25. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
26. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.
27. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.
28. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being “well-functioning” and “sustainable”.
29. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. 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 MoU between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
30. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
31. On the same date, UNMIK and EULEX signed an agreement on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
32. **Circumstances surrounding the abduction and probable killing of M.V. and the abduction and killing of M.Đ. and D.S.**
33. The first complainant (case no. 291/09) is the father of M.V. The second complainant (case no. 292/09) is the wife of M.Đ. The third complainant (case no. 296/09), is the wife of D.S.
34. The complainants state that M.V., M.Đ. and D.S., disappeared on 22 June 1999 in the area of Lipjan/Lipljan. The complainants in cases nos 291/09 and 292/09 each state that M.V. and M.Đ. “were taken away” by unknown persons” on the road between Rubovc/Rabovce and Lipjan/Lipljan and that they “have not heard” from them ever since. They reported the abduction to KFOR and UNMIK; however they received “no response”.
35. The complainant in case no. 296/09 states that, on 22 June 1999, D.S., left work and at 15:00 he went to Lipjan/Lipljan to pick up his vehicle from his sister’s house. He left from his sister’s house two hours later and he has not been seen alive since. The complainant reported the abduction to KFOR, UNMIK, the “Police” and “all other organisations”. She states that the family knows “the murderers who had committed a crime”.
36. The names of M.V., M.Đ. and D.S., appear in the database compiled by the OMPF[[3]](#footnote-3) and in the online database maintained by the ICMP. The entry in the ICPM database on M.V. reads, in the relevant fields, “Sufficient Reference Samples Collected” and “EULEX has provided information on this missing person on 10-26-2010 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters”. The entries in the ICPM database on M.Đ. and D.S. read, in the relevant fields, “Sufficient Reference Samples Collected” and “EULEX has provided information on this missing person on 9-28-2010 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters”[[4]](#footnote-4).

**C. The investigation**

1. In the present case, the Panel received from UNMIK investigative documents previously held by the UNMIK OMPF, UNMIK Police (MPU and WCIU), and EULEX WCIU.
2. Concerning disclosure of information contained in the files, the Panel recalls that investigative files have been made available for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.
3. The investigative file shows that the abduction of M.V., M.Đ. and D.S. were investigated by the UNMIK Police under MPU case file no. 1999-000107, MPU Investigation no. #0348/INV/04, WCIU cases file no. 2000-00123 and WCIU case file no. 2005/00076.

*Early investigative activities (1999-2002)*

1. The investigative file shows that a missing person case on M.V., M.Đ. and D.S., was opened by the MPU at some time in 1999 under case file no. 1999-000107.
2. The file includes printouts of Intel Messages generated on 28 March 2000, containing information on M.V. and M.Đ., stating that they were kidnapped on the road from Rubovc/Rabovce and Lipjan/Lipljan on 17 June 1999. They were travelling in M.V.’s vehicle, a “Zastava 750, yellow” and the abduction was reported to KFOR.
3. In a Memorandum dated 18 August 2000, the UNMIK MPU data manager requested the Police station in Lipjan/Lipljan to provide a copy of the initial report concerning the abduction of M.V., M.Đ. and D.S., as well as ante-mortem data on the missing persons and information on the location of their family members in order to collect from them complete ante-mortem information. Entries in an MPU Case Continuation Report specifically concerning M.Đ. state that additional information, including the missing person’s date of birth and the registration plate of the vehicle he was travelling in had been gathered from his daughter on 17 November 2000; that a 16-page report (not included in the file submitted to the Panel) had been transmitted by the OSCE on 15 November 2011; and that ante-mortem information on D.S. and M.V. had been received from the ICRC between 4 and 12 April 2002.
4. The file also shows that, following the receipt of a criminal complaint by the District Prosecutor’s Office in Pejë/Peć (copy of the criminal complaint is not included in the file submitted to the Panel), a criminal investigation was opened by the UNMIK WCIU under case file no. 2000/00123. The file contains a letter from the President of the District Court in Pejë/Peć, dated 21 February 2002, forwarding to the District Public Prosecutor in Pejë/Peć seven case files, among them the one registered as no. 123/2000, for his review. However, no document concerning this case is included in the investigative file.

*Reports on KLA detention centres and organ trafficking (2000-2003)*

1. The file contains a document of the “Coordination Centre of Federal Republic of Yugoslavia and Republic of Serbia for Kosovo and Metohia”, bearing no date, listing the names of persons allegedly responsible for organising and committing murders, abductions, destruction of property and other criminal acts against Serbs and other non-Albanian persons in Kosovo. This document states that Mr A.T. from the village of Gadimla e Ultë/Donje Gadimlje, municipality of Lipjan/Lipljan, “took part in the abduction of [M.V. and M.Đ.]”.
2. The file also contains a memorandum, dated 20 April 2000, with a request from the UNMIK Police Chief of Information Centre to the Mitrovicë/Mitrovica UNMIK Police Regional Commander, which in the field “subject” reads “Concentration Camps”. In the memorandum it is requested that the Mitrovicë/Mitrovica UNMIK Police provide follow-up to a “diplomatic request that for the sensitivity of the situation we would appreciate a special treatment from your assigned officers”. A memorandum in response to the above request is also included in the file, dated 27 April 2000, from the UNMIK Police Mitrovicë/Mitrovica Regional HQ Intelligence to the Chief of Information Centre, forwarding a report entitled “KLA Prisons on the Territory of AP KiM and in Republic Albania”. The report contains a list of 111 KLA clandestine detention centres indicating their precise location throughout Kosovo and the northern part of Albania. In the case of some detention centres, the report also indicates the KLA members allegedly in charge of operating the centres, as well as the names of those detained there. Concerning the case at issue, the report indicates that kidnapped Serbs from Lipjan/Lipljan, among them M.V., M.Đ. and others, were detained in a prison in “Racak-Stimlje” municipality. The report states that M.V. and M.Đ. had been kidnapped by A.T. from Gadimla e Ultë/Donje Gadimlje village (the same individual mentioned above).
3. The file also contains an Interoffice Memorandum of 5 February 2001 from UNMIK Central Information Centre to the Assistant Director of Investigations, stating that “the alleged existence of illegal detention centres in Kosovo, which are supposed to be led by members of the so called KLA” had been one of the main issues on the agenda of the Joint Implementation Commission’s meetings concerning the implementation of the Military Technical Agreement (see § 18 above). A list of illegal detention centres had been handed over by the Serbian delegation in the Joint Implementation Commission to the UNMIK Assistant Director of Investigations, and from him to the “regional headquarters”, with the request to investigate those places and revert back to him on a weekly basis. Despite an “immense” workload, the regional headquarters had “tried their best” and “came back with several investigation results”. As the allegations about illegal detention centres were mostly “based on rumors”, UNMIK requested more detailed information from the Serbian delegation, which they provided after a few months with respect to two detention centres. The memorandum further states that the problem remained about “who is going to be tasked with investigating this particular matter. It seems to be no doubt that this matter has to be one of the future priorities of the work of UNMIK police as this issue is already discussed on a political level as well and therefore a solution is urgently required”. It is stated in the memorandum that the results of “two investigation examples” were being forwarded; however no further documents are included in the investigative file submitted to the Panel.
4. Among the investigative files is a document dating back to October 2003 prepared by UNMIK DoJ for the ICTY summarising the information about a suspected ring of trafficking in human beings by the KLA between Kosovo and Albania for the purpose of forced prostitution and organ harvesting. According to this document, M.V., D.S. and M.Đ. were among the “captives” taken to Albania and kept in a detention facility in Northern Albania in July or early August 1999 for this purpose.
5. There is no further documentation in the file concerning this matter. As far as the Panel is aware, no relevant indictments have been issued by the ICTY. However, in spring 2011, following the issuance of the Council of Europe report *“Inhuman treatment of people and illicit trafficking in human organs in Kosovo”*,the EU Special Investigative Task Force was established with the mandate to investigate, among others, the allegations concerning organ harvesting.

*Exhumation of unidentified bodies in Prishtinë/Priština (2003)*

1. According to documents of the UNMIK and EULEX OMPF, the mortal remains of several unidentified persons, among them those later identified as those of M.V., M.Đ. and D.S., were located in the “Dragodan” cemetery in Prishtinë/Priština in June 2003.
2. The file contains the reports of autopsies conducted by the OMPF on 4 December 2003 on the mortal remains of three unidentified persons, marked with ICTY nos YKA60/007BP, YKA60/009BP and YKA60/010BP respectively. According to the pathologist, the mortal remains were largely incomplete and for this reason the cause of death of the three unknown persons could not be ascertained.

*MPU Investigation #0348/INV/04; Identification and handing over of the mortal remains of D.S. (April-November 2004)*

1. From 13 April to 17 April 2004, the UNMIK MPU conducted an ante-mortem investigation, #0348/INV/04*,* into the abduction of M.V., M.Đ. and D.S., An ante-mortem investigation report, which cross-references MPU case file no. 1999-000107, states under the field “Summary of information received to initiate the investigation” that M.V., M.Đ. and D.S. had gone missing on 22 June 1999 and that, based on the information in the MPU file, they had probably been “stopped by the KLA, and taken into detention in a not known place”. The report states that KFOR had carried out some investigations into the case and that “some information regarding possible perpetrators” was available in the file. The report further states that on 10 April 2004, UNMIK investigators took a statement from a witness, an UNMIK local staff member. The investigators concluded that there was no information as to the whereabouts of the missing persons and that the case should be kept pending.
2. On 16 April 2004, the UNMIK MPU addressed a memorandum to the CCIU forwarding two statements from the witness mentioned above. The memorandum states that “one of the possible perpetrators is mentioned by name” in the MPU file and that, if requested, “this information will be forwarded to the CCIU”. However, only one witness statement is contained in the MPU file as made available to the Panel. In this statement, the witness stated that, on 22 June 1999, the day that M.V., M.Đ. and D.S. were abducted, he was working with the British KFOR military police. Two days after the kidnapping, the sister and the brother-in-law of one of the “kidnapped” persons (only surname of the brother-in-law provided) went to the police station where he was working and reported that they had received information that M.V., M.Đ. and D.S were imprisoned in a house beside the “KLA Police Station”, in the so-called “Gipsy area” on the road Lipjan/Lipljan - Rubovc/Rabovce. Upon their request, the sister of one of the kidnapped went with the KFOR soldiers to show them the exact location of the alleged prison. She was then taken back to the police station, while the KFOR soldiers and the witness went in a convoy of six or seven vehicles to the alleged “house-prison”. The soldiers broke into the house and found cigarettes still burning in the ashtray as well as some straw sacks, where probably three or four persons had been sleeping. The KFOR soldiers realised they had arrived too late and, after bringing the witness back to the police station, continued their search in houses and fields nearby for at least two hours, with no results. The witness stated that a sergeant told him that they had searched all houses in the surrounding area except for the building used as “KLA Police Station”. The sergeant thought the prisoners were being kept there; however, they were not allowed to search that building. The witness further stated that two days before the kidnapping, “by mistake”, he had been taken by KFOR soldiers to “that KLA Police Station” and that he was ready to name the persons he had seen there, who, at the time of the statement, were mostly working as “KPS officers”. The witness also stated that he had subsequently heard that the three missing persons had been executed and buried near the “KLA Police Station’ in Lipjan/Lipljan. However, this information was based on rumours that he could not confirm.
3. Included in the file are OMPF documents, including an identification certificate and a confirmation of identity certificate, stating that the mortal remains of D.S. (MPU case no. 1999/00107 and ICTY no. YKA 60/008BP) had been discovered on 16 June 1999 in the “Dragodan” cemetery of Prishtinë/Priština and identified on 22 October 2004 through DNA analysis. On 8 November 2004, D.S.’s mortal remains were handed over to his family.

*WCIU Cases no. 2000-00123 and 2005-00076 (October 2007)*

1. The investigative file also contains documents of the UNMIK WCIU concerning the cases of M.V., M.Đ. and D.S., registered as WCIU case no. 2000-00123, as well as case no. 2005-00076.
2. The file contains a printout of the WCIU database generated on 2 October 2007 with a Case Report concerning specifically the abduction of D.S., registered under case file no. 2005-00076. In the field “Summary”, the report states that the victim was driving his red “Zastava Jugo Koral”, with registration plate PR 607-55, on his way from work, when he was stopped by an armed group wearing KLA insignia. He was abducted and taken in an unknown direction. The report also states that the case was related to case file no. 2000-00123 and that it had been opened following the filing of a criminal complaint by D.S.’s brother. It is stated in the criminal report, also included in the file, that the abduction had been reported on the same day to the KFOR and that the injured party “was not given any opportunity to get any information regarding steps and measures taken aimed at finding the abducted person or the perpetrators”. A related Case Analysis Report of the WCIU, dated 4 October 2007, in the field “Investigator Recommendation/Opinion”, states “the case is reported as a criminal offence of abduction. However, there is a lack of information concerning the case. There are no witnesses, no evidence, no element in order to identify the perpetrators, even the exact location of the event is unknown. More further information are needed to conduct the investigation in a good way”.
3. The file also contains a printout of the WCIU database, generated on 22 October 2007, with a Case Report this time relating to case file no. 2000-00123 cross-referenced with MPU file no. 1999-00107. In the field “Investigator”, the report states “missing files”, while under the field “Summary” the report states “MPU requested information about the missing person. No entries in the CCIU database on date. New input on 21/02/06, reference to Ante-mortem 0348/INV/04”. It further provides a summary of the circumstances surrounding the abduction of M.V., M.Đ. and D.S., as known from the MPU file.
4. On 18 July 2009, a prosecutor of the EULEX Kosovo Special Prosecution Office (SPRK) issued a request to conduct further investigation with respect to the UNMIK Police case no. 2000-00123, concerning the alleged abduction of M.V., M.Đ. and D.S. The request states that, according to information received from the ICRC in 2007, the latter was not listed any longer as missing, while M.V. and M.Đ. were still missing. Also one witness statement had been obtained, revealing mainly “hearsay” evidence. The request also noted that there were similarities between that case and the case recorded as 2005-00076. According to the prosecutor, the only difference between the two cases was a one year difference in the stated date of birth for D.S. so that it was “possible that the same incident has been investigated with two different case numbers”.

*Identification of the mortal remains of M. Đ. and M.V. (2007-2012)*

1. With respect to M.Đ., the investigative file contains a Comparison Table, dated 28 September 2007, comparing the available ante-mortem information on M.Đ. with the post-mortem information on three groups of mortal remains (marked as YKA60-007BP-1, YKA60-007BP-2 and YKA60-010BP9) exhumed from the “Dragodan” cemetery in Prishtinë/Priština in June 2003. The file also contains ICMP DNA Reports dated 12 September 2009, 22 February 2008 and 7 April 2010 respectively, confirming the DNA compatibility of blood samples from M.Đ.’s family members and DNA samples from the three groups of mortal remains mentioned above.
2. On 7 June 2010, the ICMP issued a Confirmation of Identity Certificate, based on DNA analysis, for M.Đ. According to a death certificate issued by the EULEX OMPF, the death occurred at some time before 16 June 2003; however, its cause could not be ascertained. On 17 October 2010, the mortal remains of M.Đ. were handed over to his family.
3. Concerning M.V., the EULEX OMPF has informed the Panel that his mortal remains, consisting of “five small fragments”, were also discovered at the “Dragodan” cemetery in Pristhinë/Priština in June 2003 and identified through DNA analysis in April 2012. However, the family has refused to accept the mortal remains, which were therefore handed over to the Serbian Government Commission on Missing Persons.

*Documents from NY Archives*

1. The documents obtained from UN archives in New York include one folder labeled as MPU case file no. 1999-000107 containing copies of the MPU ante-mortem investigation reports of 2004 (see § 47 above), a Victim Identification Form for M. Đ. as well as copies of the ICMP DNA reports and OMPF documents (autopsy report, death certificate, identification certificate and confirmation of identity certificate) concerning M.Đ. The documents include also a six-page file marked as UNMIK WCUI-CCIU case file no. 2005-00076, containing copies of the criminal complaint filed in 2005 concerning the abduction of D.S., and copies of the WCIU Case Report and Case Analysis Report dated 2 October 2007 and 4 October 2007, respectively (the same documents as in § 51 above).
2. **THE COMPLAINTS**
3. The complainants complain about UNMIK’s alleged failure to properly investigate the abduction and probable killing of M.V., and the abduction and killing of M.Đ. and D.S. In this regard, the Panel deems that the complainants invoke a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
4. The first (case no. 291/09) and second complainant (case no. 292/09) also complain about the mental pain and suffering allegedly caused to them by this situation. In this regard, the Panel deems that the complainants rely on Article 3 of the ECHR.
5. **THE LAW**
6. **Alleged violation of the procedural obligation underArticle 2 of the ECHR**
	1. **The scope of the Panel’s review**
7. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
8. In determining whether it considers that there has been a violation of Article 2 (procedural limb) and of Article 3 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.
9. The Panel notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, [the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf), the Convention on the Rights of the Child.

1. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
2. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above (see § 62). In the particular case of killings and disappearances in life-threatening circumstances, it is not the Panel’s role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.
3. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights “that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).
	1. **The Parties’ submissions**
4. The complainants in substance allege a violation concerning the lack of an adequate criminal investigation into the abduction and probable killing of M.V., and the abduction and killing of M.Đ. and D.S. The complainants also state that they were not informed as to whether an investigation was conducted and what the outcome was.
5. In his comments on the merits of the three joined cases, the SRSG states at the outset that UNMIK has requested from EULEX copies of relevant files previously held by the UNMIK Police WCIU and/or by the OMPF that were transferred to EULEX after 2008. The SRSG further states that UNMIK “was obliged to handover all police files, without exception, to EULEX, pursuant to United Nations Security Council presidential statement of 26 November 2008 and agreements entered into with EULEX. Upon UNMIK’s transfer of all police files to EULEX, UNMIK ceased to be the custodian of police records in Kosovo and could not, as a matter of principle, retain copies of classified and on-going police investigation files. UNMIK, having discharged its responsibility to hand over all police records to EULEX, may now seek permission to access such records for archiving purposes in accordance with conventional practice and agreements made with EULEX. EULEX, based on its own reasonable assessment, including any prevailing operational requirements, may, or may not, release, or release only in part, such investigation records. UNMIK therefore notes that a failure to transmit a complete investigation file to the HRAP cannot lead the HRAP to the irrebuttable presumption that UNMIK failed to carry out a proper investigation or that files were not fully and accurately handed over by UNMIK to EULEX. For this reason, UNMIK reserves its right to make additional comments on the instant matter at any further stage, should additional pertinent files be made available to it”.
6. On the merits of the complaint under Article 2, the SRSG acknowledges that the abduction of M.V., M.Đ. and D.S. in June 1999 occurred in life threatening circumstances. He notes that at that time the security situation in Kosovo was 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”.
7. The SRSG therefore accepts UNMIK’s responsibility to conduct an investigation in the case of M.V., M.Đ. and D.S. under Article 2 of the ECHR, procedural part, stemming “from the procedural obligation to conduct an effective investigation where death occurs in suspicious circumstances not imputable to state agents”. In the words of the SRSG, “the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended”.
8. The SRSG considers that such an obligation is two-fold, including an obligation to determine through investigation the fate and/or whereabouts of the missing person; and 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.
9. Nonetheless, according to the SRSG, when examining the complaint under Article 2, due consideration shall be given to “the difficulties inherent in post-conflict situations, and the concomitant problems that limit the ability of investigating authorities when conducting investigations of such nature”. The SRSG further observes that obligations under Article 2, must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources. Furthermore, after a long and brutal war, Bosnia and Herzegovina underwent fundamental overhaul of its internal structure and political system: Entities and Cantons were set up pursuant to the Dayton Peace Agreement, power-sharing arrangements were introduced in order to ensure effective equality between the “constituent peoples” in the post-conflict society (see Sejdić and Finci v. Bosnia and Herzegovina [GC], nos. 27996/06 and 34836/06, ECHR 2009 ...), new institutions had to be created and the existing ones had to be restructured. Some reluctance on the part of the former warring parties to work with those new institutions could be expected in the post-war period, as evidenced in the present case. While it is difficult to pinpoint when exactly this process ended, the Court considers that the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005, following comprehensive vetting of the appointment of police and judiciary and the establishment of the War Crimes Sections within the Court of Bosnia and Herzegovina.

All this considered and since there has been no substantial period of inactivity post-2005 on the part of the domestic authorities in the present case, the Court concludes that, in the circumstances obtaining at the material time, the domestic criminal investigation can be considered to have been conducted with reasonable promptness and expedition”.

1. In the view of the SRSG, the situation in Kosovo “from 1999 to 2008 was in most respects similar to that experienced in Bosnia and Herzegovina from 1995 to 2005”.
2. The SRSG states that during the Kosovo conflict thousands of people went missing, at least 800,000 people were displaced and thousands were killed. Many of those that went missing were abducted and killed, buried in unmarked graves and “in certain instances were killed outside of Kosovo, or had their mortal remains moved and buried outside of Kosovo, further adding to the difficulty in locating and recovering the remains”.
3. In June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of 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. The SRSG states that, in the effort to demonstrate that crimes were systematic and widespread, the ICTY teams conducted autopsies on as many bodies as possible, carrying out little or no identification work; moreover, unidentified bodies exhumed in 1999 were reburied in locations still unknown to the OMPF. After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “ex-officio, without any broader prosecutorial strategy”. As a consequence, a large amount of unstructured information was collected.
4. The SRSG states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is “testament to the vigour of its work between 2002-2008” and that “more bodies continued to be located in burial sites and more identifications and returns to family members are taking place, often based on information contained in UNMIK-OMPF files”. The SRSG continues that “therefore, it is apparent that the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one” in Kosovo as reflected in the Palić case referred to above. The SRSG further notes that this process was “reliant on a number of actors rather than just UNMIK, for example the International Commission on Missing Persons, the International Committee of the Red Cross and local missing persons organisations.”
5. The SRSG further argues that fundamental to conducting effective investigations is a professional, well trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task, which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

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

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

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to the crime. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police.
2. He further states that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
3. The SRSG therefore argues that the constraints describe above inhibited the ability of UNMIK to conduct all investigations in a manner that “may be demonstrated, or at least expected, on other States with more established institutions and without the surge in cases of this nature associated with a post-conflict situation”.
4. Notwithstanding his comments that the investigative files as transmitted by EULEX might be incomplete (see § 67 above), the SRSG states that, based on the available documents, it is evident that UNMIK conducted an effective investigation into the case at issue.
5. With respect to the task of locating and identifying missing persons in Kosovo after the conflict, the SRSG states that initially UNMIK had no capacity to conduct DNA tests on the mortal remains that were being discovered and that their identification was therefore done through “traditional means”. Upon the creation of the OMPF in 2002, UNMIK established the performance of “DNA tests as a standard practice for identification purposes”; however the OMPF did not have “its own capacity to conduct DNA tests as it had to arrange for such professional tests with the ICMP based in Bosnia-Herzegovina”. According to the SRSG, the establishment of the OMPF and its role in the identification of dead bodies, as confirmed by the number of missing persons recovered and identified by the OMPF between 2002 and 2008, “confirms the fact that UNMIK’s efficiency in dealing with the challenging situation of war crimes, abductions and unlawful kills gradually improved with time”.
6. Concerning UNMIK’s investigation into the case of M.V., M.Đ. and D.S., the SRSG states that, based on the documents obtained by EULEX, it is evident that UNMIK Police did open and pursue an investigation into the possibility of establishing their whereabouts and identifying their perpetrators. This investigation resulted in the discovery and identification of D.S.’s mortal remains, which were handed over to the family in 2004, as well as to the location in June 2003 of M.Đ.’s mortal remains, which were identified by the EULEX OMPF in 2010 and therefore handed over to his family. Concerning M.V., the SRSG notes the facts stated in the Panel’s admissibility decision that his mortal remains were identified through DNA analysis in 2010; however he states that there were no documents in the file received from EULEX regarding his identification or whether his remains were returned to the family. The SRSG further states that, despite the fact that the mortal remains of M.Đ. and M.V. were not identified until 2010, after the transfer of investigative responsibilities to EULEX, the investigative efforts of the UNMIK Police certainly contributed to the identification.

1. Summarising the steps taken to identify the perpetrators, the SRSG states that a missing person file concerning M.V., M.Đ. and D.S was opened by the UNMIK MPU in 1999. An ante-mortem investigation was conducted in April 2004, when UNMIK Police gathered information from “witnesses and family members of the victims” that D.S. was driving his red “Zastava Jugo koral” vehicle when the three men disappeared. The SRSG notes that, however, according to other documents in the file, M.V. and M.Đ. were travelling together in a yellow “Fica” vehicle on the date of their abduction.
2. On 15 April 2004, UNMIK MPU recorded one witness statement. The witness was not an eye-witness to the reported abduction; nonetheless he stated that he could provide information about the place where he thought M.V., M.Đ. and D.S were being detained and offered to identify the KLA members that he saw at the KLA police station in Lipjan/Lipljan. He also stated that the case had been first reported to and investigated by the KFOR. This witness statement was forwarded to the CCIU. According to the SRSG, it is also important to note that, as the EULEX SPRK reviewed the case in 2009, similarities between the case of D.S. and the one recorded under reference 2005-00076 were observed. The SPRK prosecutor recommended that the witness mentioned above be interviewed as his evidence was based on hearsay.
3. The SRSG states that the fact that the cause of death of M.Đ.’s mortal remains could not be ascertained through the autopsy conducted on his mortal remains “would have hindered investigative steps that could have been taken by the UNMIK Police”. The SRSG further notes that, on 4 October 2007, the UNMIK WCIU concluded that there was a lack of information concerning the case, as there were no eye-witnesses and no evidence concerning the identity of the possible perpetrators and the exact location of the reported abduction.
4. In his comments on the merits of the case of D.S., dated 5 March 2012, prior to the Panel’s decision to join his case to the cases concerning M.V. and M.Đ., the SRSG states that the inconsistencies between “the one witness statement and information concerning the movements and sightings of the victim, both in Kosovo and in Albania, rendered the credibility of the only probable witness”, that is one of the sources indicated in the document mentioned in § 43 above, “doubtful”.
5. In his comments of 20 May 2014, the SRSG reiterates that “the conflicting nature of witness statements regarding the vehicle that was being driven the day of the disappearance, the lack of any eye-witnesses and physical evidence all posed a real hurdle to the conclusion of any investigation by UNMIK”. The SRSG states that without witnesses or physical evidence being discovered, police investigations inevitably stall because of lack of evidence. The SRSG further states that “nothing in the available files indicates that UNMIK Police had any investigative leads through which it could concretely follow up and successfully arrest and prosecute the perpetrators”.
6. In light of the above, the SRSG argues that UNMIK did conduct an investigation in accordance with the procedural requirements of Article 2 of the ECHR.
	1. **The Panel’s assessment**
7. The Panel considers that the complainants invoke a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) in that UNMIK did not conduct an effective investigation into the abduction and probable killing of M.V., and the abduction and killing of M.Đ. and D.S.
8. *Submission of relevant files*
9. UNMIK confirmed that all available files regarding the investigation have been presented to the Panel. However, the SRSG suggests that the files might be incomplete and reserves his right to make additional comments on the instant matter at a further stage, should additional pertinent files be made available (see § 67 above).
10. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the 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).
11. The Panel notes the SRSG’s submission that UNMIK was obliged to hand over all police files to EULEX in 2008 and that it may now seek permission from EULEX to access such records for archiving purposes. The SRSG states that “a failure by EULEX to transmit a complete investigation file cannot lead the HRAP to the irrebuttable presumption that UNMIK failed to carry out a proper investigation or that files were not accurately handed over by UNMIK to EULEX”.
12. The Panel notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations until their completion, including the proper record of all hand overs which might have taken place, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2. In this respect, the Panel notes that the proper handover of criminal files should include at least an inventory and receipt of all transferred files, including for the purpose of maintaining the chain of custody, a basic principle in criminal investigations.
13. As the SRSG does not clarify which parts of these files could be missing and why, the Panel considers that UNMIK is not in a position to verify the completeness of the former UNMIK Police files as transmitted to UNMIK by EULEX, the present custodian of the files. In particular, the Panel notes that no inventory of files as they were handed over to EULEX was provided to it. The Panel deems it appropriate to draw inferences from this situation.
14. The Panel also recalls the SRSG’s position that since all police files had been transferred to EULEX and UNMIK ceased to be their custodian, it could no longer retain copies of classified and on-going police investigation files (see § 67 above).
15. In this respect, the Panel, first, notes that, in case the proper handover did take place, UNMIK should have been in position to relatively easy track down this file and at least obtain from it copies of relevant documents, for the Panel’s review. Second, in the Panel’s view the SRSG should have indicated to the Panel which legal provisions prohibited UNMIK from retaining the copies of the investigative documents created by UN staff members, under the authority vested in them by the UN Security Council. Moreover, contrary to the above SRSG’s assertion, UNMIK presented to the Panel investigative material concerning this case which was retrieved from the archives of the UN Headquarters in the US (see §§ 11, 12, 157 above).
16. Concerning the issue of access to the investigative files now in the custody of EULEX, the Panel notes from the SRSG’s comments that UNMIK investigative files were not, either entirely or partially, archived before their handover to EULEX and that agreements were signed by EULEX and UNMIK in order to enable UNMIK to fulfil its archiving requirements. The Agreement of 12 December 2008 between UNMIK and EULEX *On the Transfer of Police Files, Archives and Other related Documents and Material*, at Article 7.6 and 8.6, concerning the transfer of criminal cases and case files and war crimes cases and case files respectively, states that “upon request by UNMIK , EULEX “shall grant access” to the abovementioned files “for the purpose of enabling UNMIK to fulfil its archiving requirements in relation to *all documents* *and materials* [emphasis added] contained within such files and which are related to the investigations undertaken by UNMIK Police. The Parties shall determine modalities of such access … taking into account their respective operational requirements”.
17. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. Drawing inferences from the fact that the agreements mentioned above entitle UNMIK to request full access to *all* the investigative files previously held by the UNMIK Police and to determine jointly with EULEX the modalities of such access, the Panel assumes that documents provided to it have been selected so as to demonstrate to the maximum extent possible the effectiveness of the investigation in question.
18. 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 of15 March 2011, § 146).
19. *General principles concerning the obligation to conduct an effective investigation under Article 2*
20. The complainants state that UNMIK failed to conduct an effective investigation into the abduction and probable killing of M.V., and the abduction and killing of M.Đ. and D.S.
21. 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 (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.
22. In order to address the complainant’s allegations, the Panel refers 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, 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, § 86, Reports 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).
23. 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 § 65 above, at § 136).
24. 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).
25. Setting out the standards of an effective investigation, the Court has stated that “beside being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC], *Varnava and Others v.* Turkey, cited in in § 65 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312, and ECtHR, *Isayeva v. Russia*, cited above, at § 212).
26. 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 ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 102, 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 investigative work (see ECtHR, *Velcea and Mazăre* *v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
27. Even with regard to persons disappeared and later found dead, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that “the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 105 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 65 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; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 65 above, at § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above).
28. 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 *Ahmet Özkan and Others v. Turkey*, cited in § 104 above, at §§ 311‑314; *Isayeva v. Russia*, cited in § 104 above, §§ 211-214 and the cases cited therein).” ECtHR [GC], *Al-Skeini and Others v. United Kingdom*, no. 55721/07, judgment of 7 July 2011, § 167, ECHR 2011).
29. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191). The United Nations also recognises 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 UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; see also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 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).
30. *Applicability of Article 2 to the Kosovo context*
31. The Panel is conscious that the abduction and probable killing of M.V., and the abduction and killing of M.Đ. and D.S. occurred shortly after the deployment of UNMIK in Kosovo in the immediate aftermath of the armed conflict, when crime, violence and insecurity were rife.
32. On his part, the SRSG does not contest that UNMIK had a duty to investigate the case under Article 2 of the ECHR. 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.
33. 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.
34. 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).
35. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court on Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 105 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 § 108 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 § 104 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 104 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
36. The Court has acknowledged that “where the death [and disappearances] to be investigated under Article 2 occur in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at §164;ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 102 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, at §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
37. Similarly, the HRC has held that the right to life, including its procedural guarantees, shall be considered as the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (see, HRC, General Comment No. 6, cited in § 101 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
38. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 25 above).
39. 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.
40. *Compliance with Article 2 in the present case*
41. The complainants state that the abduction of M.V., M.Đ. and D.S. was promptly reported to the KFOR, UNMIK and “other organisations”. The Panel notes that UNMIK became aware of the abductions by the end of 1999 when, according to the SRSG, the MPU opened a missing person file on the case (see § 83 above).
42. Examining the particulars of this case, the Panel notes that there were obvious shortcomings in the conduct of the investigation from its commencement. However, in light of the considerations developed above concerning its limited temporal jurisdiction, the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 105 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see § 27 above).
43. Having noted the SRSG’s assertion that the file submitted to the Panel may be incomplete, and the lack of further explanation in relation to this (see § 67 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 §§ 93-98 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.
44. At the outset, the Panel notes that it is apparent from the investigative file that in April 2000 UNMIK Police had received an intelligence report according to which the complainants’ family members, M.V., M.Đ. and D.S., had been abducted by a named person and were being at that time illegally detained in a KLA prison in “Racak-Stimlje” municipality (see § 41 above). The same report contained information that other named persons were “detained against their will” in 111 KLA “concentration camps” and provided indication of their location and, in some instances, of the KLA members in charge. The Panel notes with concern that it is not clear from the investigative file which actions, if any, were taken by the UNMIK Police to verify or follow-up on this information, not only with respect to the case of M.V., M.Đ. and D.S., but also with respect to a wider investigation involving a possible pattern of abductions and illegal detentions by the KLA throughout Kosovo and northern Albania.
45. The Panel notes that efforts were reportedly made by the KFOR to locate the whereabouts of M.V., M.Đ. and D.S. immediately after their abduction. The Panel also notes that for about four years until the re-exhumation of unidentified bodies in June 2003, no significant step was taken by UNMIK Police, apart from the registration of the case as a missing person file in 1999, the collection of ante-mortem information from M.Đ.’s daughter, in November 2000, and from the ICRC, in April 2002 (see § 37 above).
46. The document mentioned in § 43 above shows that, at the latest by October 2003, the UNMIK DoJ had received information from eye-witnesses, all former KLA members, about captives - among them M.V., M.Đ. and D.S.. - who had been taken to illegal detention centres in Albania, reportedly for the purpose of having their organs harvested (see §§ 43-44). There is no indication in the file of the actions taken by UNMIK to further investigate these most serious allegations apart from transmitting the information to the ICTY in 2003. The Panel is extremely concerned that so little effort was made to investigate and give effect to the right to truth to these particularly shocking allegations.
47. In June 2003, the UNMIK OMPF re-exhumed and carried out autopsies for identification purposes on several unidentified bodies – among those the mortal remains later identified as those of M.V., M.Đ. and D.S. – which had been previously exhumed and re-buried by the ICTY in the “Dragodan” cemetery in Prishtinë/Priština. Between October and November 2004, only the mortal remains of D.S., were identified through DNA test and handed over to his family.
48. The only relevant investigative activity undertaken by the UNMIK Police in 2004 was the collection of the statement from a witness, who was working with the British KFOR at the time the abductions were reported to them. This witness stated that, two days after the event, the sister and the brother-in-law of one of the victims (only the surname of the latter was provided) had reported the abduction to the KFOR indicating to them the place where the victims were reportedly detained. The KFOR located the alleged place of detention, where they found signs there that it had been abandoned shortly before their arrival. The witness stated that they had been most likely moved to another detention centre, the so called “KLA Police Station” in Lipjan/Lipljan, where, however, KFOR were not allowed in. He also stated that he knew the KLA members managing the “KLA Police Station”; that most of them had become KPS officers and that he was eager to provide their names to the UNMIK Police. The file shows that this statement was transmitted to the UNMIK CCIU. However, there is no indication in the file that any follow-up activity was made on the witness statement, notably to request him to provide the names of the KLA members possibly involved in the abduction and detention. Moreover, no attempt appears to have been made to record formally the statements from the complainants or to contact the sister of the “kidnapped” who had at the time of the abduction provided the KFOR with information on a possible place of detention and may therefore have been able to provide additional lines of enquiry.
49. 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 § 65 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
50. As the bodies of M.V. and M.Đ. had not yet been identified and those responsible for the abduction had not been located, UNMIK was obligated to use the means at its disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as wellas to inform the relatives ofM.V., M.Đ. and D.S. regarding the progress of the investigation.
51. The Panel notes that at some time in 2005, following the filing of a criminal report by the brother of D.S., a criminal investigation was opened by the UNMIK WCIU under case file no. 2005-00076, notwithstanding the fact that the abduction of M.V., M.Đ. and D.S. had already been recorded under WCIU case file no. 2000-00123. The Panel notes that this fact indicates poor coordination between different units of the UNMIK Police.
52. Both cases were subject to review by the WCIU in October 2007; however both reviews were far from being adequate. The Panel notes from the assessment of the WCIU investigators reviewing the case file no. 2005-00076 in 2007 that they were not aware of most relevant information collected thus far by other units of the UNMIK Police (the fact that the mortal remains of D.S. had been by then already identified and handed over to his family; the information on possible witnesses, perpetrators, places of detention; the allegations that the victims could have been executed to have their organs removed). The Panel also notes that the review, also in 2007, of case file no. 2000-00123 revealed that the case files had gone “missing” in unexplained circumstances and that information on the case had been retrieved by the MPU in 2006. The Panel also notes that the investigators did not realise at this time that the both WCIU cases concerned the same incident, as discovered by a EULEX prosecutor reviewing the case in 2009. The Panel further notes that it was the recommendation of the reviewing investigator that “more information are needed to conduct the investigation in a good way”; however, according to the documents available, no other investigative activity aimed at identifying the perpetrators and bringing them to justice was taken by UNMIK until the case was handed over to EULEX in 2008. The Panel also notes that, by this time, the mortal remains of M.V. and M.Đ., discovered in June 2003, had not yet been identified.
53. The apparent lack of any immediate reaction from UNMIK Police, and of any adequate action at later stages, may have suggested to the perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
54. Having considered that important information, including the name of a potential perpetrator and a witness, available to UNMIK from the early stage of the investigations, the Panel cannot agree with the SRSG that no investigative leads were available to the UNMIK Police. Nor does the Panel accepts that the investigation inevitably stalled due to the lack of witnesses and evidence, the inconsistencies concerning the vehicle the victims were driving on the date of their abduction, or the lack of eye-witnesses and physical evidence. In this respect, the Panel has already held that finding the necessary information to fill the gaps of an investigation 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. As has been shown, a number of investigative leads available were ignored by the investigators.
55. The Panel has already noted the principle that proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigation to their handing over, is crucial to the continuation of such investigations and could thus raise per se issues under Article 2. The Panel also notes that it is evident in the present case that the poor maintenance of the investigative file, along with the inadequate review of the case seriously undermined the effectiveness of the investigation and its continuation, including by EULEX.
56. It is also not clear to the Panel if this investigation was reviewed by a prosecutor at any stage. The Panel notes in this respect that UNMIK was in receipt of two criminal reports concerning the case of M.V., M.Đ. and D.S., filed with the DPPO in Pejë/Peć in 2000 and 2005 (see §§ 39 and 51 respectively). However, no formal instructions from any prosecutor are on file.
57. The Panel is aware that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, such an investigation must be undertaken in a serious manner and not be a mere formality.
58. The Panel therefore **considers** that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK to identify the perpetrators and to bring them to justice. In this sense the Panel considers that the investigation into the case of M.V., M.Đ. and D.S. was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see §§ 105-106 above), as required by Article 2.
59. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires that in all cases the victim’s next-of-kin must be involved in the investigation to the extent necessary to safeguard his or her legitimate interests (see ECtHR [GC], *Tahsin Acar v. Turkey*, no. 26307/95, judgment of 8 April 2004, § 226, ECHR 2004-III; ECtHR, *Taniş v. Turkey*, no. 65899/01, judgment of 2 August 2005, § 204, ECHR 2005-VIII).
60. The Panel notes from the investigative file that the only recorded contacts between UNMIK investigators and the complainants or their families is a contact by the MPU with the daughter of M.Đ. in November 2000, for the purpose of gathering ante-mortem information, and another for the handover of the mortal remains of D.S. in November 2004 (see 37 above). It appears that no witness statement was ever taken from the complainants and other family members throughout the investigation and there is no evidence in the file that they were contacted in order to receive updates on the progress of the investigation.
61. The Panel therefore considers that the investigation was not accessible to the complainants and their families, as required by Article 2.
62. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and probable killing of M.V. and the abduction and killing of M.Đ. and D.S. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
63. **Alleged violation of Article 3 of the ECHR**
64. The Panel considers that L.V. and M.Đ.**,** the complainants in cases nos 291/09 and 292/09 respectively, invoke, in substance, a violation of the right to be free from inhumane or degrading treatment, guaranteed by Article 3 of the ECHR.
65. **The scope of the Panel’s review**
66. 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 §§ 60 - 65 above).
67. 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, at § 98; ECtHR [GC], *Cyprus v. Turkey*, cited in § 65 above, at § 156; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 6 November 2002 at § 358; ECtHR, *Bazorkina v. Russia*, cited in § 115 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 105 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, opinion of 25 February 2013). “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).
68. 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).
69. **The Parties’ submissions**
70. The complainants in substance allege that the lack of information and certainty surrounding the abduction and probable killing of M.V. and the abduction and killing of M.Đ., particularly because of UNMIK’s failure to properly investigate their case, caused mental suffering to them and their families.
71. With respect to Article 3, the SRSG acknowledges that the European Court of Human Rights has established in its case-law that the situation of the relatives of missing persons may disclose inhuman and degrading treatment contrary to Article 3. In particular, the Court has determined that the finding of such a violation is not limited to cases where the respondent authority has been held responsible for the disappearance, but can arise where “the failure of the authorities to respond to the quest for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts, may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing person”.
72. The SRSG states that the first complainant is the father of M.V. and that the second complainant is the wife of M.Đ.; however neither of them witnessed the abduction. Further, according to the SRSG, “there are no allegations by either of the Complainants of any bad faith on the part of UNMIK personnel involved with the matter, nor of any attitude by UNMIK Police that would have evidenced any disregard for the seriousness of the matter or the emotions of the Complainants and their family members”. The SRSG also states that there is no documentation or claim that UNMIK acted inappropriately when responding to enquiries of the complainant or with an attitude amounting to a violation of Article 3 of the ECHR.
73. The SRSG states that the understandable mental anguish and suffering of the complainants cannot be attributed to UNMIK but it is rather “a result of the inherent suffering that results from the disappearance and death of close family members”. He states that, in this sense, the European Court has held that the suffering family members must have a “character distinct” from the emotional distress which may be regarded as inevitably caused to the relatives of a victim of a serious human rights violation. The SRSG argues that, as this was not the case, UNMIK cannot be held responsible for a violation of Article 3.
74. **The Panel’s assessment**
75. *General principles concerning the obligation under Article 3*
76. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, ECHR, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
77. 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 § 101 above, at § 150).
78. 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.
79. 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*, 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, *Mojica v. Dominican Republic*, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).
80. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (see ECtHR, *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Ergi and Others v. Turkey*, cited in § 114 above, at § 94).
81. 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 complainant 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, *Ergi and Others v. Turkey,* cited above, at § 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).
82. 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 *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 lead 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. Russian Federation*, cited in § 116 above, § 11.7).
83. 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).
84. 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 § 152 above, § 109; ECtHR, *Gelayevy v. Russia*, no. 20216/07, cited in § 143 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 115 above, at § 140).
85. 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.
86. 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).
87. *Applicability of Article 3 to the Kosovo context*
88. 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 §§ 109 - 117).
89. 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 § 25 above).
90. 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.
91. 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.
92. *Compliance with Article 3 in the present case*
93. 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.
94. The Panel notes the proximity of the family ties between the complainants and the missing persons, as they are their father and spouse respectively. Accordingly, the Panel has no doubt that they indeed suffered serious emotional distress since the abductions, which took place in June 1999.
95. The Panel likewise notes that the complainants and their families applied to various bodies with enquiries (see §§ 31, 39, 51 above), but despite their attempts, they have never received any explanation or information as to what became of their family members following their abduction.
96. The Panel cannot overlook the period of almost complete inaction of the authorities, between 1999 and 2004, despite the fact that they had been provided since the beginning of the investigation with relevant leads. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainants in its entirety.
97. The Panel recalls that the two only recorded contacts between UNMIK investigators and the complainants or their families are UNMIK investigators is a contact of the MPU with the daughter of M.Đ. in November 2000, for the purpose of gathering ante-mortem information and another for the handover of mortal remains of D.S. in November 2004 (see 38 above). It appears that no witness statement was ever taken from the complainants and other family members throughout the investigation and there is no evidence in the file that they were contacted in order to receive updates on the progress of the investigation.
98. Drawing inferences from UNMIK’s failure to provide any plausible explanation for the absence of any sustained and regular contact with the complainants and their families, or information about the reasons for the prolonged inaction by UNMIK Police with regard to the investigation into the abduction and probable killing of M.V. and the abduction and killing of M.Đ., the Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave uncertainty about their fate and the status of the investigation.
99. In view of the above, the Panel concludes that L.V. and M.Đ. suffered severe distress for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with their complaints and as a result of their inability to find out what happened to their family members. In this respect, it is obvious that, in any situation, their pain to live in uncertainty about the fate of their close family members must be unbearable.
100. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the distress and mental suffering of L.V. and M.Đ., in violation of Article 3 of the ECHR.

**V. CONCLUDING COMMENTS AND RECOMMENDATIONS**

1. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
2. The Panel notes that enforced disappearances and arbitrary executions constitute serious violations of human rights which, shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for killings, abductions or disappearances in life threatening circumstances. Its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
3. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s mission, made compliance with UNMIK’s human rights obligations difficult to achieve.
4. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 27), 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 declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
5. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

* In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 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 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 probable killing of M.V. and the abduction and killing of M.Đ. and D.S. will be established and that perpetrators will be brought to justice. The complainants and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
* Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the abduction and probable killing of M.V. and the abduction and killing of M.Đ. and D.S., as well as the distress and mental suffering subsequently incurred by L.V. and M.Đ. and makes a public apology to the complainants and their families in this regard;
* Takes appropriate steps towards payment of adequate compensation to all complainants for the moral damage suffered due to UNMIK’s failure to conduct an effective investigation, as well as for distress and mental suffering incurred by L.V. and M.Đ. 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 WITH REGARD TO THE COMPLAINTS OF L.V. AND M. Đ.;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND PROBABLE KILLING OF M.V. AND THE ABDUCTION AND KILLING OF M.Đ. AND D.S. IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND PROBABLE KILLING OF M.V. AND THE ABDUCTION AND KILLING OF M.Đ. AND D.S., AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED BY L.V. AND M. Đ., AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS AND THEIR FAMILIES;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 TO ALL COMPLAINANTS, AND IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 3 OF THE ECHR TO L.V. AND M. Đ.;**
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 COMPLAINANTS 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

**HQ** - Headquarters

**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

**IP** - International Prosecutor

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

**KLA** - Kosovo Liberation Army

**MPU** - Missing Persons Unit

**MUP -** Ministry of Internal Affairs (*Министарство унутрашних послова*) of the Republic of Serbia

**NATO** - North Atlantic Treaty Organization

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

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

**RIU** - Regional Investigation Unit

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

**SPRK** - EULEX Kosovo Special Prosecution Office

**UN** - United Nations

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

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

**VRIC** - Victim Recovery and Identification Commission

**WCIU** - War Crimes Investigation Unit

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
2. The references drawn upon by the Panel in setting out this general background include: OSCE, “As Seen, as Told”, Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, “Abductions and Disappearances of non-Albanians in Kosovo” (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos. 71412/01 and 78166/01, 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 OMPF database is not open to public. The Panel accessed it with regard to this case on 24 June 2014. [↑](#footnote-ref-3)
4. The ICMP database is available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 24 June 2014). [↑](#footnote-ref-4)