

**OPINION**

**Date of adoption: 25 June 2015**

**Case No 297/09**

**Dušanka TRIFUNOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 25 June 2015,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 27 May 2009 and registered on 2 June 2009.
3. On 24 November 2010 and 20 April 2011, the Panel requested the complainant to provide additional information. The complainant responded on 5 August 2011 and 21 September 2011.
4. On 22 September 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on the admissibility of the complaint. On 4 November 2011, the SRSG submitted UNMIK’s response.
5. On 26 September 2012, the Panel declared the complaint admissible.
6. On 16 October 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
7. On 24 March 2013, the SRSG provided UNMIK’s comments on the merits of the complaint, together with copies of the investigative files.
8. On 15 May 2015, the Panel requested UNMIK to confirm if the disclosure of files concerning the case could be considered final. On 18 May 2015, UNMIK provided its response.
9. Upon Panel’s request, on 22 and 29 May 2015, the Department of Forensic Medicine (DFM) of the European Union Rule of Law Mission in Kosovo (EULEX) provided additional clarification.
10. **THE FACTS**

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

1. The events at issue took place in the territory of Kosovo after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
2. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a “Military Technical Agreement” by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.
3. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to “promote and protect human rights” in Kosovo in accordance with internationally recognised human rights standards.
4. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
5. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbs, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
6. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbians, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,653 are listed as still missing by the International Committee of the Red Cross (ICRC) as of May 2015.
7. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.
8. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.
9. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being “well-functioning” and “sustainable”.
10. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document, which among other things reiterated the commitment of solving the fate of missing persons from all communities and recognised that the exhumation and identification programme is only part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
11. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with EULEX assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
12. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
13. **Circumstances surrounding the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić.**
14. The complainant is the daughter-in-law of Mr Vojimir Živić and the cousin of Mr Dragan Živić.
15. The complainant states that Mr Vojimir Živić and Mr Dragan Živić were abducted from the village of Starorujicë/Staro Rujce, municipality of Lipjan/Lipljan, in July 1999. Since that day, neither were seen alive again.
16. The complainant states that the disappearance was reported to the ICRC, UNMIK Police, KFOR and the missing person’s office in Gračanica/Graçanica.
17. The names of Mr Vojimir Živić and Mr Dragan Živić are included in the database compiled by the UNMIK OMPF[[3]](#footnote-3). The entries in relation to Mr Vojimir Živić and Mr Dragan Živić in the online database maintained by the ICMP[[4]](#footnote-4) gives 8 July 1999 as their date of disappearance and states in relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this missing person on 07-29-2003 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters”.
18. Despite UNMIK formally providing confirmation of identity for both men, based on a DNA analysis report of 15 July 2003, the family does not accept the identification results.

**C. The investigation**

*Disclosure of relevant files*

1. On 24 March 2013, UNMIK provided to the Panel documents which were held previously by the UNMIK MPU and WCIU. On 18 May 2015, UNMIK confirmed to the Panel that all files in UNMIK’s possession have been disclosed.
2. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

*OMPF / MPU files*

1. The first document in the investigative file is an undated Ante-Mortem Victim Identification Form, affixed with the MPU file no. 2000-000167. Besides containing the personal details and ante-mortem description of Mr Vojimir Živić, it provides the name and contact details of his wife, Mrs P.Ž.
2. There is another undated Ante-Mortem Victim Identification Form, affixed with MPU file no. 2000-000167, containing the personal details and ante-mortem description of Mr Dragan Živić. It also provides the name and village of his mother, Mrs P.Ž. in Kosovo as well as of his sister, Ms O.Ž., along with her telephone contact details.
3. The investigative file contains a document titled “Case File Diary”, dated 13 July 1999, and a “Initial Case Report” of the Royal Military Police, British KFOR, dated 14 July 1999. The documents describe how, on 12 July 1999 in Lipjan/Lipljan area, two bodies of dead males were found by KFOR; the bodies had gunshot wounds and their hands were tied behind their backs. The details of crime scene investigation are provided in these documents, including photographs of the bodies. The documents state that no bullets, shells or casings were found; marks at the scene suggest that the bodies had been moved to that location from elsewhere. The bodies were taken to the mortuary in the University Hospital, Prishtinё/Priština.
4. The file contains an undated OSCE document titled “Human Rights Interview/Incident Form” with a reference no. PR/LI/026/99. The document contains the name of Mr Dragan Živic as a missing person. Of particular note, the document states “[o]n 08.07.99 Mr. ZIVIC was out working in the field with his father about 1 kilometre away from his house when they disappeared. The ZIVIC family is originally from STARO RUJICE/RUFC I VJETER. The village was mixed before the war and just after the war the family got into an argument with some of the [Kosovo Albanians] in the village about the ownership of the tractor. The argument finished with that the [Kosovo Albanians] threatened the family that they were going to see what happened if they did not give them the tractor.”
5. The MPU file also contains several Case Continuation Reports for the case of Mr Vojimir Živić and Mr Dragan Živić, affixed with the MPU file no. 2000-000167. The Reports contain numerous inputs, however, due to the illegibility of some of the dates in some reports, it is difficult to determine whether the first inputs are in January or May 2000, with the last input dated May 2004. Each input provides details on the investigation, updated data and references on meetings with the family of Mr Vojimir Živić and Mr Dragan Živić. There is an input, with a date of 31 [illegible] 2000, which states “[c]omplainant comes to the MPU office in Gracanica to give some additional information in the case of her kidnapped relations…the two [missing persons] left the village of Staro Rujice, to move to Novo Naselje (Lipljan). They wanted to left the house because of the threats. They left with their car, a white Zastava PR601-92, Novo Naselje on 08/07/99 to go back to work in the garden. While doing this they were taken by Albanians together with their car. No direct witnesses available.” There is another Case Continuation Report, dated 04 May 2000, which states “Input OK”.
6. There is another Case Continuation Report, with an undated entry, providing the names of two of the above mentioned persons; specifically the notes state; “[t]hey are brothers and they can give us more informations than we have…wife and mother of the [missing persons] informed us that she sees the car in which they were kidnapped every day passing in front of her house on the road from Lipljan to Priština…white Zastava.”
7. One of the Case Continuation Reports, dated 17 April 2001, provides details of an interview with Mrs P.Ž. Several details were provided including a description of the vehicle they were last seen with, information about a recent attack on the family by “masked Albanian men”, and the names of three other persons from her village of Starorujicë/Staro Rujce who could provide more information.
8. The same Case Continuation Report states that Mrs P.Ž. went to see M., the KLA commander of that region, immediately after their abduction; M. reportedly used offensive language and made inculpatory statements regarding the disappearance of Mr Vojimir Živić and Mr Dragan Živić. The report also states that Mrs P.Ž. and M “met in one house in the village Staro Rujce that is located on the road to village MAGURA direction GOLESH. She went there with the KFOR-Finland. That occasion UCK Leader deny everything and above mention words he spoke while KFOR was going out on Serbian to the old lady. Interpreter was Albanian ‘cause old lady doesn’t speak Albanian language and she doubt what he spoke about. ANTE-MORTEM forms collected.”
9. There is a Case Continuation Report, dated 21 June 2001, which notes a meeting where MPU will “close the file at the missing persons’ level.” The document also states “[a]s there are indications in the file towards possible offenders, a copy covered by this memo should be sent to CCIU for further investigation. (If not done yet)”.
10. There are several documents in the file with respect to the identification of Mr Vojimir Živić and Mr Dragan Živić. Among those are MPU record of the identification of clothing found on the bodies, by the family, which took place in May 2001. There are also documents which indicate that family members and friends were shown photographs of the bodies. A dentist who was friend of Mr Dragan Živić positively identified him from the photographs as well as from his dental records. The autopsy reports and death certificates of both states that the cause of death was a gunshot wound to the head; a bullet was located in one of the bodies.
11. There are also several documents referencing meetings where the family refused to accept the identification of the bodies of Mr Vojimir Živić and Mr Dragan Živić until confirmed by Yugoslav experts in June 2001 and July 2002.
12. There is an undated letter in Serbian and English in the file titled “Subject: The request for additional identification”. The letter has a signature line with the names of three relatives, including Mrs P.Ž., and states “The family haven’t been satisfied with evidence presented to them and therefore we are asking and additional identification of posthumous remains performed by Yugoslav experts. Until such identification hasn’t been conducted, the family refuse to take over posthumous remains found in the place ‘Woods of Torino’.”
13. The file contains an MPU report, dated 2 June 2002, titled “Overview of the Actual Situation” which provides details that led to the identification of the mortal remains of Mr Vojimir Živić and Mr Dragan Živić through traditional means and subsequent rejection of the identification by the family, in the absence of a DNA test. The report concluded that “[f]or MPU Pristina and Belgrade this case is closed. This means that there will no be [*sic.*] invested anymore in time and manpower for this case…..If they want to wait for the DNA results the bodies will stay where they are until results of ICMP DNA program are available.”
14. Another Case Continuation report, dated 27 June 2002, provides details of another meeting with Mrs P.Ž. The notes of the report state:

[s]ubject of this meeting was to contact Zivic family and establish if they are prepared for the handover of the mortal remains, because identification process was completed and FRY pathologist Dr. Dobricanin agreed with findings. [Mrs P.Ž.] stated that she believes that those results are false, and that she believes that her son is still alive, because “she saw him twice on KTV (Kosovo TV)…

She is also asking the continuation of investigation because name and rank of KLA (UCK) officer who is responsible for kidnapping are known. [Mrs P.Ž.] stated that she doesn’t believe Dr. Dobricanin or DNA test results and that she will accept bodies only in case that KLA officer with surname [M] is arrested and accused for war crimes by the Hague war Tribunal.

1. There are two DNA reports in the file, dated 15 July 2003, attached to the file for Mr Vojimir Živić and Mr Dragan Živić confirming the positive DNA identification of their mortal remains. They are followed by two other OMPF documents titled “Confirmation of Identity”, dated 12 August 2003, in relation to Mr Dragan Živić and Mr Vojimir Živić.
2. There is a memorandum in the file, dated 21 April 2004 from MPU Pristina to MPU Belgrade, providing details on unsuccessful attempts to convince the family of the identification of Mr Vojimir Živić and Mr Dragan Živić based on DNA comparisons. The memorandum provides further details of a meeting with Mrs P.Ž., on 20 April 2004, where she confirmed that she did not accept the bodies. The memorandum also provides details of attempts by UNMIK to coordinate with the Serbian Orthodox Church for the burial of the bodies. Details of the burial in the Prishtinë/Priština cemetery are also provided, including names of those present, several photographs of the burial site and a map detailing the specific graves.

*CCIU file*

1. The CCIU file contains a number of MPU weekly reports, for the period from March 2001 to April 2003, containing occasional reference to the status of the case of Mr Vojimir Živić and Mr Dragan Živić. There are also a number of weekly reports of the “Serbian Team” occasionally giving reference to Mr Vojimir Živić and Mr Dragan Živić stating “[f]amily do not want body back – reburial to be arranged”. There are also a number of documents, dated July 2002, detailing the exhumation of the bodies of Mr Vojimir Živić and Mr Dragan Živić for the purpose of DNA testing.
2. There is a printout from an “Investigation Database”, dated 23 April 2003, stating “Gravesite\*\*Infor by Intelligence Unit that during the war, 2 Serbians Dragan ZIVIC and his father ZIVIC Vojimir from Novo Rujce, Lipjan had been killed and were buried in the wood close to village Torina. Photos of gravesite from heli were attached.” There is a handwritten note which read “CLOSED – Already at ID 05/05/03” signed by an investigating officer.
3. The file contains an undated printout of a screenshot titled “UNMIK Police Missing Persons Unit Kosovo “MPU Files” containing the biographical data of Dragan Živić and basic information related to his killing.
4. There is an MPU Investigation Continuation Form in the file, dated 30 April 2003, referencing no. 0061/INV/03 as well as MPU file no. 2000-000167. The document refers to the discovery of the bodies of Mr Vojimir Živić and Mr Dragan Živić. The document also states that “[a]fter a further check with MPU Identification Pillar, it was found out that the bodies of MPs are in the morgue of Orahovac. The clothing of the MPs was identified by relatives. Currently MPU is waiting for final DNA result…I want to mention that the wife of [missing person] is living in Lipjan. She mentally did never accept that the two bodies found are the bodies of her missing relatives. In future it could be that more Intelligence reports are coming in or the wife will request more investigations on that case. This case is closed in MPU Data Base.”
5. The file contains a memorandum, dated 15 May 2003, from the MPU in Prishtinë/Priština to the Director of Investigations in UNMIK Police. The memorandum is almost identical to the one above but contains the following additional text: “[a]fter investigation in the home village of [missing persons] Novo Ruice, it was found out that relatives of [missing persons] (wife and 2nd brother) are currently living in Lipjan, Novo Naselje…the clothing was identified by an aunt of [missing persons], currently living in Serbia. After the final DNA result, the bodies will be handover and buried in Serbia.”
6. The file contains two documents titled “UNMIK Police Initial Report”, both dated 27 August 2003, with respect to Mr Vojimir Živić and Mr Dragan Živić respectively. Both documents contain a summary which states: “[t]his case was turned over to me by Team Leader [T.K.] as a result of information received from RIU. It was reported that during the war in 1999, two Kosovo Serbian males Dragan Zivic and Velimir Zivic (father and son) from the village of Novo Rujce had been taken and killed by members of UCK. The bodies were alleged to have been buried in a wooded area close to Torina Village (Grid. Ref. 054/085). After obtaining information from Investigator [K] I went to MPU Pristina and discovered an open file relating to this incident. The MPU file indicated that an attempt was made to collect a DNA sample from the family members and at this time the results are inconclusive. Due to the fact that this case is ongoing file with MPU, I recommend that further CCIU investigation into this case be put on hold until MPU completes their investigation.”
7. The last document in the file is titled “War Crimes Investigation Unit – Case Report”, date printed 2 September 2007, containing the names and file numbers of Mr Vojimir Živić and Mr Dragan Živić. The field titled “Date in” states “31-Aug-99” and the last entry date appears to be much earlier than printed date, as the field titled “date out” states 12 November 1999. The field titled “Summary” states: “This case was handed over by British KFOR, Military Police. About 1400 hrs on Monday 12 July 1999, a KFOR patrol found the bodies of two unknown males in a remote wooded area near Torina, Lipljan. Both males had their hands tied behind their backs, one had been shot in the head, the other had been shot in the chest. From indications at the scene, it is believed that both were killed elsewhere. The bodies were taken to the Mortuary at Pristina hospital. The field titled “Status” states “Closed” and the field titled “Status notes” states “Lack of Evidence”.

*EULEX DFM clarification*

1. The DFM confirmed to the Panel that the DNA identification of the mortal remains of Mr Vojimir Živić and Mr Dragan Živić was confirmed by the ICMP in 2003. However, as the family did not accept the DNA identifications, the mortal remains of both victims were subsequently buried by Serbian authorities in Dragodan cemetery in Prishtinё/Priština.
2. **THE COMPLAINT**
3. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić. In this regard, the Panel deems that the complainant invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
4. The complainant also complains about the mental pain and suffering allegedly caused to her by this situation. In this regard, the Panel deems that the complainant relies 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) 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 § 56). 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 complainant in substance alleges a violation concerning the lack of an adequate criminal investigation into the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić.
5. In his comments on the merits of the complaint, the SRSG does not dispute that UNMIK had a responsibility to conduct an effective investigation into the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić**,** in line with its general obligation to secure the effective implementation of the domestic laws which protect the right to life, given to it by UN Security Council Resolution 1244 (1999) (see § 11 above) and further defined by UNMIK Regulation No. 1999/1 *On the Authority of the Interim Administration in Kosovo* and subsequently, UNMIK Regulation 1999/24 *On the Law Applicable in Kosovo,* and Article 2 of the ECHR.
6. In this regard, the SRSG stresses that this responsibility stems from the procedural obligation under Article 2 of the ECHR to conduct an effective investigation where death occurs in suspicious circumstances not imputable to State agents. He argues that, in general, when considering whether UNMIK has satisfied its procedural obligations under Article 2 of the ECHR, the Panel must take into consideration the special circumstances in Kosovo at the time.
7. The SRSG considers that the obligation is two-fold, including an obligation to determine through investigation the fate and/or whereabouts of the dead 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.
8. The SRSG adds that in June 1999, “the security situation in post-conflict Kosovo remained tense. KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.”
9. The SRSG argues that in its case-law on Article 2, the European Court of Human Rights has stated that due consideration shall be given to the difficulties inherent to post-conflict situations and the problems limiting the ability of investigating authorities when conducting investigations in such cases. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court in the case *Palić v. Bosnia and Herzegovina,* stating at paragraph 70:

The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources […]

1. In the view of the SRSG, in the aftermath of the Kosovo conflict, UNMIK was faced with a similar situation as the one in Bosnia. Many of those persons who were unaccounted for were abducted, killed and buried in unmarked graves inside or outside of Kosovo, which made very difficult locating and recovering their mortal remains.
2. 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 its 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, 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.
3. 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 and 2008” and that “more bodies have been located in burial sites and more identification and returns to family members are taking place, often based on information contained in OMPF files”. The SRSG continues that “[u]nderstandably, the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an 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 other than UNMIK, for example the International Commission on Missing Persons, the ICRC and local missing persons’ organisations.”
4. 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 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 very challenging task for police managers to establish common practices for optimum results in a high-risk environment.

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to crimes. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and cultures, with limited support from the still developing Kosovo Police.
2. The SRSG further states that these 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, “[s]uch constraints inhibited the ability of an institution such as UNMIK Police to conduct all investigations in a manner […] that may be demonstrated, or at least expected, in other States with more established institutions and without the surge in cases of this nature associated with a post-conflict situation.”
3. With regard to this particular case, the SRSG asserts that “[i]t should be noted that the first leg of the obligation related to the procedural element of Article 2 of the ECHR […] does not apply to this case, since according to the UNMIK Police War Crimes Investigation Unit – Case Report, retrieved on 2 September 2007, a murder investigation was opened under case number 1999-00083 in the case of Mr. Vojin Živić and Dragan Zivić. The record indicates that on 12 July 1999, soon after the stated date of disappearance of the victims, a KFOR patrol found the bodies of two unknown males in a remote wooded area near Torina, Lipljan. The bodies were taken to the mortuary at Pristina hospital. The document subsequently lists the names of the victims as Vojmir Zivić, date of birth 27 June 1927, and Mr. Dragan Zivić, date of birth 11 August 1958. Consequently, there was no obligation for UNMIK OMPF to open an investigation to determine the fate and/or the whereabouts of the deceased persons.”
4. The SRSG provides several statements citing parts of the UNMIK investigation file with respect to the successful location and identification of the mortal remains of Mr Vojin Živić and Mr Dragan Zivić through photographs, dental records and clothing. The SRSG also refers to a Case Continuation Report, dated 27 June 2001, noting the refusal of the wife and mother of Mr Vojin Živić and Mr Dragan Zivić respectively to accept the identification findings or the handover of the mortal remains for burial.
5. The SRSG refers to UNMIK efforts to exhume the bodies for DNA analysis and cites a UNMIK Police Report of 28 April 2003 indicating a review was conducted “which documented the unsuccessful attempts that had been made by UNMIK police investigators to obtain DNA samples from family members”. He then refers to an OMPF Confirmation of Identity form that states that DNA match was found with samples collected by the ICMP.
6. The SRSG argues “contrary to the Complainant’s statement that since their disappearance in 1999 the fates of Mr. Vojimir Zivić and Mr. Dragan Zivić have remained unknown, there is clear evidence that investigations were conducted by UNMIK Police in relation to the deaths of Mr. Vojimir Zivić and Mr. Dragan Zivić. Attempts were also made by various UNMIK authorities to conclude the formal identification and hand over of their mortal remains to the Zivić family prior to 23 April 2005, the starting point for HRAP’s temporal jurisdiction.”
7. With respect to the investigation aimed at identifying and bringing to justice the perpetrators responsible for the abduction and killing of Vojin and Dragan Živić, the SRSG argues that “it is evident that UNMIK Police did open and pursue an investigation into the disappearance and death of Mr. Vojimir Zivić and Mr. Dragan Zivić. However, UNMIK asserts that the lack of identifiable witnesses and physical evidence posed a real hurdle to the conclusion of any investigation by UNMIK. UNMIK has noted in other missing person’ cases that without witnesses or physical evidence being discovered, police investigations inevitably stall because of lack of evidence.”
8. In addition, the SRSG argues that “UNMIK was unable to obtain DNA samples from family members for a positive confirmation of the identity of the victims and, while it is noted that the family did eventually cooperate with the ICMP, their initial and sustained unwillingness with regard to corroboration of the identification evidence would have seriously impacted the ability of UNMIK Police to focus its investigative direction.”
9. The SRSG states that “it is evident that UNMIK Police did conduct an investigation in accordance with the procedural requirements of Article 2 of ECHR, aimed bringing the perpetrators to justice.” He closes by stating “nothing in the available files indicates that UNMIK Police had any investigative leads through which it could concretely follow up an successfully arrest and prosecute the perpetrators. UNMIK therefore reserves its right to make further comments on the allegations related to the inadequacy of investigations to HRAP, should additional information be brought to its attention.”
10. The SRSG concludes that with regard to the complaint, there has been no violation of Article 2 of the ECHR.
	1. **The Panel’s assessment**
11. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) in that UNMIK did not conduct an effective investigation into the abduction and killing of Mr Vojin Živić and Mr Dragan Živić.
12. *Submission of relevant files*

1. At the Panel’s request, on 24 March 2013, the SRSG provided copies of the documents related to the investigations subject of the present complaint, which UNMIK was able to recover. On 18 May 2015, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 7 above).
2. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005*,* § 56).
3. Furthermore, the Panel notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2 (see HRAP, *Bulatović*, no. 166/09, opinion of 13 November 2014, § 62).
4. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. However, the Panel notes that UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
5. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaint on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of15 March 2011, § 146).
6. *General principles concerning the obligation to conduct an effective investigation under Article 2*

1. The Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights *Velásquez-Rodríguez* (see Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The Panel also notes that the positive obligation to investigate has been stated by the HRC as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Articles 2 (3) (right to an effective remedy) of the ICCPR (see United Nations Human Rights Committee (HRC), General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (UN Document A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.
2. In order to address the complainant’s allegations, the Panel refers to the well-established case-law of the European Court of 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).
3. The European Court has also stated that the procedural obligation to provide some form of effective official investigation exists also when an individual has gone missing in life-threatening circumstances and is not confined to cases where it is apparent that the disappearance was caused by an agent of the State (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 59 above, at § 136,ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
4. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310, see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210, ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).
5. Setting out the standards of an effective investigation, the Court has stated that besides being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition and affording a sufficient element of public scrutiny of the investigation or its results, the investigation must also be effective in the sense that it 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 § 59 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).
6. In particular, the investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 87, 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). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see ECtHR [GC], *El-Masri v. “the former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 88 above, at § 322).
7. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards* *v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 88 above, at § 323).
8. Specifically with regard to persons disappeared and later found dead, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that “the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 90 above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 59 above, § 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 probable killing, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 64).
9. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 89 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 89 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, ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 88 above, at § 324).
10. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR, *El-Masri v. “the former Yugoslav Republic of Macedonia”*, cited in § 91 above, § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also HRC,  *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, *Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives*, UN Document A/HRC/22/52, 1 March 2013, § 23-26).
11. *Applicability of Article 2 to the Kosovo context*
12. The Panel is conscious that Mr. Vojin Živić and Dragan Živić were abducted and subsequently killed shortly after the deployment of UNMIK in Kosovo, when crime, violence and insecurity were rife.
13. The SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2, but he reiterates that the bodies had been located by KFOR and subsequently identified, thus there was no obligation on UNMIK to investigate this matter in relation to the establishment of their fate (see § 72 above). 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.
14. 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.
15. 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).
16. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court of Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 90 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 § 94 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 § 89 above, at §§ 85-90, 309-320 and 326-330;ECtHR, *Isayeva v. Russia*, cited in § 89 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
17. The Court has acknowledged that “where the death to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and […] concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, 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 § 87 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).
18. 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 § 86 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russi*a*n Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
19. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 17 above).
20. 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.
21. Lastly, in response to the SRSG’s objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 90 above, at § 70; ECtHR, *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
22. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel’s jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight and failure to provide family members with minimum necessary information on the status of the investigation (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 93 above, § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK’s failures, which persisted throughout the period of the Panel’s jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.
23. *Compliance with Article 2 in the present case*
24. Turning to the circumstances of the present case, the Panel recalls that Mr Vojimir Živić and Mr Dragan Živić were abducted on 8 July 1999. The bodies of both men were found by KFOR on 12 July 1999 (see § 30 above). The file indicates that by 31 August 1999 UNMIK Police had been informed about the case (see § 50 above).
25. The Panel notes that there were obvious shortcomings in the conduct of this investigation from its commencement. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 59 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period 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 § 91 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 § 19 above).
26. The purpose of this investigation was to discover the truth about the circumstances of the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić and to identify the perpetrators. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
27. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim’s family. The investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation’s effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 90 - 91 above).
28. The Panel notes in this regard that according to the 2000 Annual Report of UNMIK Police, the complete executive policing powers in the Prishtinë/Priština region, including criminal investigations, were handed over from KFOR to UNMIK Police in September 1999. Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority assuming responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
29. With regard to determining the fate of Mr Vojimir Živić and Mr Dragan Živić, the Panel notes that KFOR located their bodies on 12 July 1999. UNMIK has formally identified the remains of the missing men through DNA analysis conducted by the ICMP in 2003 (see §§ 24, 42 and 51 above).
30. The Panel notes that the UNMIK OMPF made regular contacts with the family with respect to the identification of the mortal remains of Mr Vojimir Živić and Mr Dragan Živić. These efforts included contacting various members of the family, showing them photographs of the bodies and of their clothing, for identification. However, it appears that the family refused to accept the results of the identification, both by traditional means (see §§ 38 - 40 above) and by DNA (see §§ 42 and 43 above), and subsequently refused to accept the bodies, which were then buried by the Serbian authorities, in Prishtinё/Priština (see §§ 43 and 51 above).
31. The Panel has already stated on a number of occasions that location and identification of the mortal remains of a missing person is in itself an important achievement. Nevertheless, the Panel has also stressed that the procedural obligation under Article 2 did not come to an end with the discovery of mortal remains of Mr Vojimir Živić and Mr Dragan Živić, especially as they showed signs of a violent death (see e.g. HRAP, *Grujić*, no. 287/09, opinion of 19 March 2015, § 96).
32. The Panel will now turn to the investigation carried out by UNMIK Police with the aim of identification of perpetrators and bringing them to justice, that is the second element of the procedural obligation under Article 2 of the ECHR.
33. From the moment of identification, a body/mortal remains themselves, as well as the circumstances of their discovery, become an additional important source of information about the event under investigation (the time and cause of death, the place where the body was initially found, the items located on/with the body etc.). It is for the investigative authorities to obtain and preserve this additional information when it becomes available and properly utilise it in order to further an investigation towards establishing the perpetrators of the crime. In any event, in the Panel’s opinion, assessment of the post-identification investigative activities is relevant for the proper evaluation of the effectiveness of the investigation.
34. The Panel notes that although there were some initial investigative actions with respect to locating bullet casings and canvassing the immediate area where the bodies were found, they were by KFOR (see § 111 above).
35. There appears to have been little or no investigative action by UNMIK Police into identifying the perpetrators and bringing them to justice. The file indicates that the family of Mr Vojimir Živić and Mr Dragan Živić provided UNMIK Police with the information that would warrant further investigation, including details of an argument with neighbours and a subsequent threat that was made against the victims’ family (see § 31 above), the names and locations of potential perpetrators and witnesses (see § 34 above). Furthermore, in June 2002 Mrs P.Ž. informed the investigators that she had seen her son twice on Kosovo television (see § 41 above). However, there is nothing in the file indicating that UNMIK Police undertook any action to follow up on any of that information.
36. The file indicates that the bullet recovered from the skull of one of the bodies during an autopsy was not subjected to a forensic examination. Similarly, it does not appear from the file that UNMIK Police attempted to locate and interview Mr M. a person who Mrs P.Ž. states was the KLA commander for the area (see § 35 above).
37. The Panel also notes with concern the investigators recommendation that “further investigation into this case be put on hold until MPU completes their investigation” (see § 49 above). However, even after the MPU investigation was completed, in 2003, with the identification of the mortal remains of Mr Vojimir Živić and Mr Dragan Živić, the WCIU did not undertake any investigative action with regard to finding the perpetrators. Instead, the case appears to have been put in inactive status “for the lack of evidence”.
38. The Panel notes in this context that, if not worked upon, developed, corroborated by other evidence and put in a proper form, any information by itself, however good it might be in relation to a crime under investigation, does not solve it. In order to be accepted in court, information must become evidence, which can only happen through investigative actions undertaken in compliance with the applicable rules of criminal procedure. In this case, the Police appear to have never undertaken any action in this direction (see e.g. HRAP, *Todorovski*, case no. 81/09, opinion of 31 October 2013, § 116).
39. The Panel likewise recalls the SRSG’s argument that “the lack of identifiable witnesses and physical evidence posed a real hurdle to the conclusion of any investigation by UNMIK. UNMIK has noted in other missing person’ cases that without witnesses or physical evidence being discovered, police investigations inevitably stall because of lack of evidence” (see § 76 above). In this regard, the Panel must note that almost any investigation at its initial stage lacks a significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. Thus, it appears that, instead of actively searching for information and leads, UNMIK Police simply waited for further information to appear by itself. In this situation it may have led to the loss of potential evidence (see e.g. HRAP, *P.S*., no. 48/09, opinion of 31 October 2013, § 107; HRAP, *Stevanović*, no. 289/09, opinion of 14 December 2014, § 111).
40. 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 § 93 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
41. In addition, the Panel considers that, as those responsible for the crime had not been identified, UNMIK was obliged 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 well as to inform their relatives regarding any possible new leads of enquiry.
42. The file shows that the only review of the case was conducted in 2007. The Panel notes that the 2007 documents do not show any additional information had been collected since UNMIK knew about the case in 1999. Indeed, there is no evidence in the file that any substantive investigative activity had been accomplished, or even contemplated, from that time.
43. The apparent lack of any adequate reaction from UNMIK Police, and of any 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 lead to a worsening of the situation. The problems that UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
44. As the Panel has previously observed, UNMIK Police and DOJ had implemented a policy conserving its limited investigative resources and concentrating only on the investigations “with a strong likelihood of suspect identification” (see HRAP, *Stevanović*, cited in § 122 above, at § 42). As the Panel also noted, this approach was in contrast to the description of the situation on the ground presented by the UN Secretary-General to the UN Security Council at around the same time and indicated a serious systemic failure (see *ibid*., § 116). In this particular case the suspects were named by eye-witnesses, thus creating the “strong likelihood of suspect identification”. However, even in its application, this policy was not followed
45. Likewise, the file indicates no involvement of a public prosecutor in this investigation during the period under UNMIK’s administration. As the Panel has mentioned previously, a proper prosecutorial review of the investigative file might have resulted in additional recommendations, so that the case would not have remained inactive for years to come (see HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 160). Thus, in the Panel’s view, the review of the investigative files was far from being adequate.
46. The Panel is also 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. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards identifying the perpetrators and bringing them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 92 above), as required by Article 2 of the ECHR.
47. Concerning the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victims’ next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests. The investigative file shows that, while MPU investigators had made repeated attempts to contact the family of Mr Vojimir Živić and Mr Dragan Živić, it was only with respect to identification and not that regarding an investigation into identifying the perpetrators. Further, the last contact was in April 2004 (see § 43 above). The Panel therefore considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR (see, *a contrario*,  ECtHR [GC], *Mustafa Tunç and Fecire Tunç v. Turkey*, no. 24014/05, judgment of 14 April 2005, §§ 210 - 216).
48. In light of the shortcomings and deficiencies in the investigation described above, the Panel considers that the case of Mr Vojimir Živić and Mr Dragan Živić, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo (see § 106 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 102 above, at § 11.4, and ECtHR, *Aslakhanova and Others v. Russia*, cited in § 93 above § 123; HRAP, *Bulatović*, cited in § 83 above, at §§ 85 and 101).
49. Therefore, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
50. **Alleged violation of Article 3 of the ECHR**
51. **The Parties’ submissions**
52. The complainant alleges that the lack of information and certainty surrounding the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić, particularly because of UNMIK’s failure to properly investigate the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić caused mental suffering to her and her family.
53. Commenting on this part of the complaint, the SRSG rejects the allegations. The SRSG further argues that no allegations have been made by the complainant “of any bad faith on the part of the UNMIK personnel involved with the matter, or of any attitude by UNMIK that would have evidenced any disregard for the seriousness of the matter or the emotions of the Complainant and her family emanating from the disappearance and death of her father-in-law and cousin.”
54. The SRSG adds that “the Complainant states that she seeks the return of her relatives alive. UNMIK Police was unable to obtain DNA samples from family members in its attempt to identify the two bodies discovered in the municipality of Lipljan by the British KFOR on 12 August 1999, soon after the reported date of disappearance of Mr. Vojimir Živić and Mr. Dragan Živić. Further, the unwillingness of [the family] to accept that the mortal remains recovered by the British KFOR were that of Mr. Vojimir Živić and Mr. Dragan Živić, as well as the refusal of the family to accept the return of the mortal remains for burial, despite eventual and conclusive DNA identification, would suggest an overall reluctance on the part of the Complainant and other family members to come to terms with the reality of the situation.”
55. The SRSG does not dispute the mental anguish and suffering of the complainant; however he argues that this is not attributable to UNMIK as it is rather “a result of the inherent suffering caused by 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 relatives of a victim of a serious human rights violation.”

1. The SRSG therefore argues that there has been no violation of Article 3.
2. **The Panel’s assessment**

*Admissibility*

1. In its decision of 26 September 2012, the Panel declared this part of the complaint admissible. Nevertheless, the Panel has to reassess the admissibility of this part of the complaint, in light of subsequent developments in the Panel’s case law concerning the admissibility of complaints under Article 3 of the ECHR and the information in relation to the identification of the mortal remains of the complainant’s relatives, obtained by the Panel.
2. As the Panel considered above, in relation to the responsibility to establish the fate of a missing person under the procedural obligation of Article 2 of the ECHR, in the Panel’s view it ends with the positive identification of mortal remains (see § 114 above). In this case, such identification happened in July 2003, when the DNA testing carried out by the ICMP confirmed that the mortal remains found by KFOR on 12 July 1999 are those of Mr Vojimir Živić and Mr Dragan Živić (see § 42 above).
3. The Panel further notes that according to the case law of the European Court of Human Rights a member of the family of a disappeared person can under certain conditions be considered the victim of treatment by the authorities contrary to Article 3 of the ECHR, which prohibits inhuman treatment. Where the disappeared person is later found dead, the applicability of Article 3 is in principle limited to the distinct period during which the member of the family sustained the uncertainty, anguish and distress appertaining to the specific phenomenon of disappearances (see, *e.g.*, ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 114-115, *ECHR*, 2006-XIII; see also ECtHR, *Gongadze v. Ukraine*, no. 34056/02, judgment of 8 November 2005, § 185, ECHR, 2005-XI).
4. In the present case, this period lasted until the family was informed of the identification of their mortal remains, by DNA, which happened in April 2004 at the latest (see § 43 above). However, the family did not accept the identification and refused to receive the mortal remains for burial, as they apparently continue to hope that Mr Vojimir Živić and Mr Dragan Živić are alive. Although sympathising with the feelings of the family members, the Panel finds no objective reasons to doubt the results of the DNA tests carried out by the ICMP.
5. The Panel has already recalled that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only 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” (see § 59 above).
6. The Panel has no doubts as to the profound suffering caused to the complainant and her family by the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić. Nevertheless, the Panel must conclude that this part of the complaint lies outside its jurisdiction *ratione temporis* (see HRAP, *Patrnogić,* no. 252/09, decision of 16 December 2011, §§ 16-20, and HRAP, *S.C.*, no. 02/09, opinion of 8 December 2012, §§ 103-109) and for this reason shall be declared inadmissible.
7. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
8. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
9. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić, and that its failure to do so constitutes a further serious violation of the rights of the victim and their next-of-kin, in particular the right to have the truth of the matter determined.
10. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s mission, made compliance with UNMIK’s human rights obligations difficult to achieve.
11. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 19 above), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
12. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

* + - In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, at § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić will be established and that the possible perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
		- Publicly acknowledges, including through media, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the abduction and killing of Mr Vojimir Živić and Mr Dragan Živić and makes a public apology to her and her family in this regard;
		- Takes appropriate steps towards payment of adequate compensation to the complainant for the moral damage suffered due to UNMIK’s failure to conduct an effective investigation.

**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 THE COMPLAINT UNDER ARTICLE 3 IS INADMISSIBLE;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND KILLING OF Mr Vojimir Živić and Mr Dragan Živić, IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH MEDIA, RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND KILLING OF Mr Vojimir Živić and Mr Dragan Živić AND MAKES A PUBLIC APOLOGY THE FAMILY;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATION OF ARTICLE 2 OF THE ECHR.**
7. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
8. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
9. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

 Andrey Antonov Marek Nowicki

 Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

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

**DFM** - Department of Forensic Medicine

**DOJ** - Department of Justice

**ECHR** - European Convention on Human Rights

**ECtHR**- European Court of Human Rights

**EU** - European Union

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

**FRY** - Federal Republic of Yugoslavia

**HRAP** - Human Rights Advisory Panel

**HRC** - United Nation Human Rights Committee

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

**ICMP** - International Commission of Missing Persons

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

**ICTY** - International Criminal Tribunal for former Yugoslavia

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

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

**KPS** - Kosovo Police Service

**MPU** - Missing Persons Unit

**NATO** - North Atlantic Treaty Organization

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

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

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

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

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

**VRIC** - Victim Recovery and Identification Commission

**WCIU** - War Crimes Investigation Unit

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
2. The references drawn upon by the Panel in setting out this general background include: OSCE, “As Seen, as Told”, Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, “Abductions and Disappearances of non-Albanians in Kosovo” (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos. 71412/01 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 23 June 2015. [↑](#footnote-ref-3)
4. See: ICMP Missing **Persons Inquiry //** ICMP database [electronic source] - http://www.ic-mp.org/fdmsweb/index.php?w=mp\_details&l=en (accessed on 23 June 2015). [↑](#footnote-ref-4)