

**OPINION**

**Date of adoption: 22 April 2015**

**Cases Nos 13/09, 93/09, 267/09 and 302/09**

**S.C., V.F., M.O. and O.L.**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 22 April 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 of Mrs S.C. (case no. 13/09) was introduced on 21 January 2009 and registered on the same date. The complaint of Mrs V.F. (case no. 93/09) was introduced on 30 April 2009 and registered on the same date. The complaint of Mrs M.O. (case no. 267/09) was introduced on 9 April 2009 and registered on 30 April 2009. The complaint of Mrs O.L. (case no. 302/09) was introduced on 5 May 2009 and registered on 10 July 2009.
3. On 3 April 2009, the Panel requested additional information from Mrs S.C. (case no. 13/09) and on 9 December 2009, the Panel requested additional information from Mrs V.F. (case no. 93/09). The Panel received the response from Mrs S.C. on 3 June 2009, and the Panel received the response from Mrs V.F. on 5 January 2010.
4. On 24 July 2009, the complaint of Mrs S.C. (case no. 13/09) 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 10 May 2010, the SRSG submitted UNMIK’s response.
5. On 18 December 2009, the Panel requested from the European Union Rule of Law Mission in Kosovo (EULEX) information with regard to 43 complaints in relation to missing persons filed before the Panel, including the case of Mr Ž.F. (case no. 93/09). On 23 March 2010, EULEX provided a response to the Panel’s request.
6. On 9 September 2010, the Panel decided to join cases nos. 13/09, 93/09 and 302/09 pursuant to Rule 20 of the Panel’s Rules of Procedure.
7. On 24 November 2010, the Panel requested additional information from the complainant in case no. 267/09. No response was received.
8. On 27 January 2011, the Panel decided to re-communicate case no. 13/09 and to communicate cases nos 93/09 and 302/09 to the SRSG for UNMIK’s comments on admissibility of the joined cases. On 8 April 2011, the SRSG provided UNMIK’s response.
9. On 19 April 2011, the Panel decided to communicate case no. 267/09 to the SRSG for UNMIK’s comments on the admissibility of the complaint. On 31 May 2011, UNMIK provided its response.
10. On 11 August 2011, the Panel declared the complaints admissible in the joined cases nos 13/09, 93/09 and 302/09.
11. On 17 August 2011, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the joined complaints for cases nos 13/09, 93/09 and 302/09, as well as copies of the investigative files relevant to the case. On 16 September 2011, the SRSG provided UNMIK’s comments on the merits of those complaints, together with redacted copies of the investigative files.
12. On 16 December 2011, the Panel declared the complaint for case no. 267/09 admissible in part.
13. On 19 December 2011, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the case for complaint no. 267/09, as well as copies of the investigative files relevant to the case. On 14 June 2013, the SRSG provided UNMIK’s comments on the merits of the complaint, and on 22 August 2013 the SRSG provided copies of the investigative files.
14. On 4 November 2014, the Panel requested UNMIK to confirm if the disclosure of files concerning the joined cases nos 13/09, 93/09 and 302/09 could be considered final. On 6 November 2014, UNMIK provided its response.
15. On 26 January 2015, the Panel requested the SRSG to provide it with additional clarifications in relation to the investigative files for the joined cases nos 13/09, 93/09 and 302/09.
16. On 26 February 2015, the Panel decided to join case no. 267/09 to the joined cases nos. 13/09, 93/09 and 302/09 pursuant to Rule 20 of the Panel’s Rules of Procedure.
17. On 2 April 2015, UNMIK provided the Panel a copy of the investigative files with additional clarifications in relation to the investigative files concerning the joined cases nos 13/09, 93/09 and 302/09.
18. **THE FACTS**
19. **General background[[2]](#footnote-2)**
20. The events at issue took place in the territory of Kosovo during the armed conflict and shortly before the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
21. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a “Military Technical Agreement” by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.
22. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to “promote and protect human rights” in Kosovo in accordance with internationally recognised human rights standards.
23. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
24. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbs, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
25. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
26. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.
27. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.
28. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being “well-functioning” and “sustainable”.
29. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. 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.
30. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with the EULEX assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
31. On the same date, UNMIK and EULEX signed 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.
32. **Circumstances surrounding the abduction and killing of Mr B.C., Mr Ž.F. and Mr D.V.**
33. The first complainant, Mrs S.C. (case no. 13/09), is the mother of Mr B.C. The second complainant, Mrs V.F. (case no. 93/09), is the wife of Mr Ž.F. The last complainant, Mrs O.L. (case no. 302/09), is the wife of Mr D.V.
34. According to the statements made by the complainants, Mr B.C., Mr Ž.F. and Mr D.V., all soldiers of the former Yugoslav army, were abducted on 11 April 1999. They were travelling in a red van with two more Yugoslav army soldiers, Mr Ž.T. and Mr D.T.[[3]](#footnote-3), *en route* from Prizren to Prishtinë/Priština. The van was allegedly stopped near Suharekë/Suva Reka and the passengers taken away. It appears that one of the victims, Mr D.V., was able to inform his unit in Prizren that he had been kidnapped. Mr B.C., Mr Ž.F. and Mr D.V. were not seen alive again.
35. The complainants in all three cases indicate that they immediately reported the abduction of their relatives to the ICRC, the Serbian/Yugoslav Red Cross and subsequently to UNMIK Police. In addition, in case no. 93/09 the abduction of Mr Ž.F. was reported to the Serbian Ministry of Internal Affairs.
36. The complainant Mrs S.C. (case no. 13/09) submitted a copy of a document from the Yugoslav Military Department Vranje dated 14 February 2003, which summarises a statement provided by a Yugoslav commanding officer concerning the disappearance of the five Yugoslav army soldiers. The document states “[a]t approximately 16:00hrs, on April 11, 1999, Police was informed by the radio, that [Mr B.C., Mr Ž.F., Mr D.V., Mr Ž.T. and Mr D.T.] have been kidnapped by KLA forces, under [Mr I.B.’s] command. Time and place of kidnapping is unknown, and they started their voyage from Prizren to Suva Reka at 08:30. No tracks were found.”
37. The complainants in all three cases state that they submitted criminal complaints against the unidentified perpetrators of the abductions of their relatives to the relevant international prosecutors. In her complaint to the Panel, the complainant Mrs O.L. (case no. 302/09) attached a copy of the undated criminal complaint that she submitted to the International Prosecutor for the District Public Prosecutor’s Office (DPPO) in Prizren concerning the abduction of Mr D.V. The other complainants Mrs S.C. and Mrs V.F. state that they submitted complaints to the International Prosecutor for the DPPO in Prishtinë/Priština, but these documents have not been provided to the Panel and are not included in the investigative file.
38. The names of Mr B.C., Mr D.V. and Mr Ž.F. are included in the database compiled by the UNMIK OMPF[[4]](#footnote-4). The entries in relation to Mr B.C. and Mr D.V. in the online database maintained by the ICMP[[5]](#footnote-5) give 11 April 1999 as the reported date of disappearance and read in other relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this person on 11-30-2009 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters.” The entry in relation to Mr Ž.F. in the online database maintained by the ICMP also gives 11 April 1999 as the reported date of disappearance and reads in other relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this person on 1-27-2010 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters.”
39. On 12 December 2009, the mortal remains of Mr B.C. and Mr D.V. were returned to their respective families. On 5 February 2010, the mortal remains of Mr Ž.F. were returned to his family.

**C. Circumstances surrounding the abduction and killing of Mr A.O.**

1. The third complainant, Mrs M.O. (case no. 267/09) is the mother of Mr A.O. The complainant states that on 18 April 1999, Mr A.O. a volunteer with the Yugoslav army, was kidnapped by unnamed Albanians while participating in a military action near Belanicё/Belanica, Malishevё/Mališevo municipality. Mr A.O. was not seen alive again.
2. The complainant states that she reported her son’s disappearance to the Yugoslav army, the Yugoslav Red Cross, and the ICRC.
3. The name of Mr A.O. is included in the database compiled by the UNMIK OMPF[[6]](#footnote-6). The entry in relation to Mr A.O. in the online database maintained by the ICMP[[7]](#footnote-7) gives 18 April 1999 as the reported date of disappearance and reads in other relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this person on 05-30-2007 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters.”
4. On 5 June 2007, the mortal remains of Mr A.O. were identified through DNA testing. On 6 July 2007, his mortal remains were returned to his family.

**D. Circumstances surrounding the discovery and subsequent publication of photographs**

1. On 24 August 2003, UNMIK Police discovered four photographs during the search of a residence in Prelep/Prilep village, Deçan/Dečani Municipality. The photographs contained images depicting KLA soldiers holding three severed heads. The photos were subsequently published in a newspaper and other media in Serbia proper; family members identified the three heads as belonging to Mr B.C. and Mr A.O., as well as Mr Ž.T.

**E. The investigation(s)**

*Disclosure of relevant files*

1. On 16 September 2011, UNMIK provided to the Panel documents which were held previously by the UNMIK OMPF, MPU, WCIU, CCIU and EULEX concerning the joined cases nos 13/09, 93/09 and 302/09. However, UNMIK had significantly redacted important information from some of the documents related to the names of suspects and witnesses. On 22 August 2013, UNMIK provided to the Panel documents which were held previously by the UNMIK OMPF, MPU, WCIU, CCIU and EULEX concerning the case no. 267/09. On 6 November 2014, UNMIK confirmed to the Panel that all investigative files in UNMIK’s possession relating to case no. 267/09 have been disclosed.
2. On 26 January 2015, the Panel requested the SRSG to provide it with additional clarifications in relation to the investigative files for the joined cases nos 13/09, 93/09 and 302/09, specifically to provide either non-redacted investigative files or otherwise to provide the Panel with information that would allow the Panel to determine whether certain investigative steps had been taken. On 2 April 2015, UNMIK provided the Panel a copy of the investigative files that clarified some of the redacted material concerning the joined cases nos 13/09, 93/09 and 302/09.
3. 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.

*Search for the victims and the location and handover of the victims’ mortal remains regarding Mr B.C., Mr D.V. and Mr Ž.F.*

1. The earliest document in the UNMIK MPU file is an internal memorandum from the MPU to the Regional Police Commanders of the five regions of Kosovo, as well as the Commanders of the CCIU, Border Police and KFOR, dated 20 February 2000, affixed with the file number 1999-000047, which states that “[t]he MPU has registered [Mr D.V.] and [Mr B.C.] as missing persons. It is requested that the persons/units under your command check their records and sources in an effort to gather additional information on the missing persons and their disappearance.” The memorandum also requests “initial responses, including negative responses” and “[i]n the event that investigative leads are developed, subsequent monthly updates are requested.” The memorandum provides a brief description of the abduction of Mr D.V. and Mr B.C., while noting that Mr Ž.F. also went missing from the same vehicle.

1. The MPU file contains four Case Continuation Reports; the first, for Mr B.C. and Mr D.V., is affixed with the file no. 1999-000074. This first Report contains sixteen inputs, with dates ranging from 22 February 2000 to 10 October 2001; the first fourteen inputs list the five regions of Kosovo, as well as the CCIU, the Border Police, KFOR, OSCE and ICRC. It gives the dates when the MPU requested information about Mr D.V. and Mr B.C. and the dates on which those bodies responded to the MPU’s request. These dates range from 22 February to 15 April 2000. The fifteenth and sixteenth inputs, dated 05 June 2001 and 10 October 2001, respectively, state “DVI input O.K.” The second Report, for Mr Ž.F., is affixed with the file no. 2000-00068 and cross-referenced with the file no. 1999-000074. It contains five inputs, with dates ranging from 28 March 2000 to 10 October 2001. The third Report, also for Mr Ž.F., is affixed with the file number 2000-010251. It contains two inputs, dated 3 May 2001 and 8 May 2001, respectively, that state “Input DVI-DB. OK”. The fourth Report, again for Mr Ž.F., is affixed with the file no. 2000-010251 and cross-referenced with the file no. 2000-00068. It contains one input, dated 11 October 2001, which states “DVI was brought from Belgrade and the addl. info was [illegible].”
2. The MPU file contains an Ante-Mortem Victim Identification Form, for each of the three victims. The Form for Mr B.C. is undated and affixed with the file number 1999-000047. Besides containing Mr B.C.’s personal details and ante-mortem description, it provides the name, address and telephone number of Mrs S.C., one of the complainants. The Form for Mr Ž.F. is dated 3 May 2001 and affixed with the file number 2000-010251. Besides containing Mr Ž.F.’s personal details and ante-mortem description, it provides the name, address and telephone number of Mr Ž.F’s mother. The Form for Mr D.V. is dated 14 November 2001 and affixed with the file number 1999-010047. Besides containing Mr D.V.’s personal details and ante-mortem description, it provides the name, address and telephone number of Mrs O.L., one of the complainants, and of Mr D.V.’s mother.
3. In September 2009, the complete skeletonised human remains of five persons were discovered in a grave site called “Kleçkë/Klečka” in Lipjan/Lipljan municipality. Through DNA testing, these mortal remains were identified as those of Mr B.C., Mr D.V., Mr Ž.F., Mr Ž.T. and Mr D.T.
4. Concerning Mr B.C., the file contains an undated ICMP document entitled “DNA Report”, which confirms that the DNA from the sample matched the DNA results obtained from Mr B.C.’s family members. On 12 December 2009, the OMPF issued a Death Certificate which lists his cause of death as “gunshot to head”. On 12 December 2009, the mortal remains of Mr B.C. were returned to his family.
5. Concerning Mr D.V., the file contains an undated ICMP document entitled “DNA Report”, which confirms that the DNA from the sample matched the DNA results obtained from Mr D.V.’s family members. On 12 December 2009, the OMPF issued a Death Certificate, which lists his cause of death as “cut of the neck by sharp instrument”. On 12 December 2009, the mortal remains of Mr D.V. were returned to his family.
6. Concerning Mr Ž.F., the file contains an undated ICMP document entitled “DNA Report”, which confirms that the DNA from the sample matched the DNA results obtained from Mr Ž.F.’s family members. The file also contains an OMPF document dated 5 September 2005, entitled “Confirmation of Identity”, which states that the ICMP had provided results of matching bone and blood samples for Mr Ž.F. through DNA analysis. Additionally, the report states that an examination of Mr Ž.F.’s mortal remains was carried out by an OMPF pathologist who had compared the ante-mortem and post-mortem information and that the results confirmed Mr Ž.F.’s identity. On 16 February 2010, the OMPF issued an Identification Certificate confirming that the mortal remains were those of Mr Ž.F., and on 4 March 2010, the OMPF issued a Death Certificate which lists his cause of death as “gunshots to the head (two shots)”. On 5 February 2010, the mortal remains of Mr Ž.F. were returned to his family.

*Search for the victim and the location and handover of the victim’s mortal remains regarding Mr A.O.*

1. The MPU file contains an undated Ante-Mortem Victim Identification Form, for Mr A.O., which is affixed with the file number 2000-010254. Besides containing Mr A.O.’s personal details and ante-mortem description, it provides the name, address and telephone number of the complainant and her husband Mr Mi. O. in Serbia proper.
2. The MPU file also contains a document entitled “Gravesite Assessment Continuation Form”, dated 25 June 2002, affixed with the file no. 0228/INV/02 and cross-referenced with the file no. EX2002-089. Under the heading labelled “Summary of Information Received to Initiate the Investigations”, the Form states “[l]etter from ICRC dated May 28, 2002 indicated that two Yugoslav soldiers were buried in the village of Belanica during the Kosovo conflict. Directions and GPS position for the gravesite were provided for our action. Ante Mortem Data has been collected and can be provided to our unit. ICRC did not provided [*sic.*] with names of witness or/and suspect.” The Form then describes a visit by two MPU members on 24 June 2002 to the scene of the suspected gravesite, including their meeting with a witness who allegedly was present at the burial of the two Yugoslav soldiers. Under the heading labelled “Conclusion”, the Form states “[The MPU officer] believes from the information provided by ICRC and also from the unidentified witness met on 24-06-2002, that there are bodies at that gravesite…if possible the bodies should be exhumed ASAP because of the high probability to find corpses and also because of the present [*sic.*] of the yellow tape which could be removed by the villagers…There is no further action taken by the Investigative Pillar unless new information is provided.” Attached to the Form are photographs of the alleged gravesite scene and the abovementioned letter from the ICRC dated 28 May 2002.
3. The MPU file also contains a document entitled ‘Missing Persons Unit Field Report” dated 26 September 2002, affixed with the case file no. EX 2002-089. The Report describes an exhumation by an MPU team of a site in Belanicё/Belanica village, Malishevё/Mališevo municipality. The Report states “1630 hrs Exhumation stopped and nothing was found”. Under the heading labelled “Result”, the Report states “Nothing was found at the location. So File EX 2002-089 could be closed for Missing Person Unit.”
4. The MPU file also contains information stating that complete unidentified human remains were found on 4 December 2006 at an unidentified location in Malishevё/Mališevo municipality. The file contains an OMPF document entitled “Autopsy Report”, dated 24 January 2007, affixed with file no. SZO01/001B, which states that an OMPF pathologist had performed an autopsy on those human remains.
5. The file also contains an ICMP document entitled “DNA Report”, dated 24 May 2007, which confirms that the DNA from the sample matched the DNA results obtained from Mr A.O.’s family members. The file also contains an OMPF document dated 18 June 2007, entitled “Confirmation of Identity”, affixed with the file no. SZO01/001B and cross-referenced with MPU file no. 2000-010254, which states that the ICMP had provided results of matching bone and blood samples for Mr A.O. through DNA analyses. Additionally, the report states that an examination of Mr A.O’s mortal remains was carried out by an OMPF pathologist who had compared the ante-mortem and post-mortem information and that the results confirmed Mr A.O.’s identity. On 18 June 2007, the OMPF issued an Identification Certificate confirming that the mortal remains were those of Mr A.O., and the same day the OMPF issued a Death Certificate which lists his cause of death as “gunshots to the chest and right leg”. On 6 July 2007, the mortal remains of Mr A.O. were returned to his family and the file states that MPU closed its case for Mr A.O on the same day.

*Investigation with regard to perpetrators*

1. The file contains three WCIU Investigation Diaries which provide a detailed account of the activities that the WCIU investigators undertook with regard to locating the perpetrators. These documents also synthesize the investigative data which is tabulated in the investigative files’ original WCIU Investigative Reports, Intelligence Reports, Investigation Reports, Officers Reports and Witness Statements.
2. The first WCIU Investigative Diary, affixed with the file number 2003-00059, contains 50 inputs with dates ranging from 24 August 2003 until 26 November 2003. The first two inputs describe how on 24 August 2003, while performing an independent investigation, the investigators were searching a home where they found three photographs depicting a group of KLA soldiers holding decapitated heads. A later input from 3 November 2003 states that the three pictures had been released without authorisation to a newspaper and other media in Serbia proper. The input from 6 November 2003 states that the newspaper had published the photographs along with the information that the decapitated heads in the photographs were related to five Serbs who have been “reported as missing in MPU case 2000-000251 and two of them in MPU case 1999-000047”.
3. The first WCIU Investigative Diary also describes investigative activities undertaken by the WCIU after the newspaper published the photographs of the KLA members holding the decapitated heads of the Serbian soldiers. For example, the input from 13 November states “Comparison of victims’ photos was performed and printed in colour to check differences between both victims. The head of the victim could be [Mr B.C.] but not certified.” The input from 14 November 2003 states “[h]ouse search was performed in the house of [Mr X.]. Investigators met with Pec RIU [Regional Investigation Unit] Street Crimes Unit [SCU] approximately 0900 hrs. Convoy to suspect’s residence. SCU made entry w/out damage. Family members confined to one room during search by SCU. One interview conducted with mother of suspect [Mr X]. Suspect [Mr X.] and father [Mr Y.] not present in residence. Many evidences seized and inventoried including documents relating to RH. Evidences brought to CCIU offices. Following return to CCIU, [police investigator] held an extensive briefing with [the international prosecutor]…Positive identifications of [Mr X.] and [Mr Y.] due to original pictures of both of them.” Additionally, the Diary describes the forensic investigation of the photographs that was undertaken to positively identify the persons in the photographs.
4. The file contains numerous correspondences between UNMIK authorities and Serbian authorities regarding the case. Specifically, from 2003 through 2006, the file shows that UNMIK requested and received substantial information, such as witness statements from the complainants and their family members, interviews with Yugoslav officers and other evidentiary material regarding the case from the Serbian authorities, including the Serbian Ministry of the Interior. For example, the file contains the witness statements of one of the complainants, Mrs M.O. and her husband, Mr M.O., as well a document entitled “Additional Report to Witness Statement of [Mr M.O.]”, dated 15 April 2005, affixed with the case file no. 2003/00059, which provides supplementary information to the interview conducted with the complainant by an UNMIK WCIU investigator on 14 April 2005 in Serbia proper.
5. The file contains numerous other investigative documents from 2004 and 2005. These documents describe further investigative activity that took place during this time. For example, the file contains a WCIU “Ante-Mortem Investigation Report” dated 30 March 2005, affixed with the file numbers 1999-000047 and 2000-000251 and cross-referenced with the file number 0316/INV/05. Under the heading labelled “Witness Interviewed” the Report states “[the investigator] called to relatives of MP’s [Mr B.C., Mr D.T., Mr A.O. and Mr. Ž.F.]. The file contains a CCIU document entitled “Analysis of CCIU 2003-00059 by [police investigator]”, dated 20 August 2005; it provides descriptions of five witness statements that the CCIU and WCIU investigators either took themselves or received as part of the investigation, including the witness statement of Mrs S.C. (the complainant in case no. 13/09), which was obtained by Serbian authorities in Belgrade in July 2005. The file also contains an undated document entitled “WCIU Sub Document Index-Witnesses” affixed with the file number 2003/00059, which lists 27 witness statements taken by either WCIU investigators or Serbian authorities through 2005, including from the complainants.
6. The investigative file contains a series of undated documents entitled “Case Review” affixed with the file no. 2003-00059, which each provide details on the status of the case up until the time when document was written. The last of these, drafted in 2005, provides a synopsis of where the investigation stood at that time. Under the heading labelled “Background”, the Review states:

“[o]n 24th August 2003 at about 16’20 hrs Decani Station got informed by Delta Control of a shooting incident, wounding case, that occurred in Prilep village. One Patrol Unit along with Investigation Unit reached the location of the incident and was told that the suspect was [Mr X.] who had accidently wounded his cousin with a firearm during a wedding party, and after this he went to [RIU] in Pec/Peja to report the case. Decani Investigation Unit along with RIU went in the house of [Mr X.] for a search, where they found…four different pictures…In those pictures (one is signed by [Mr X.]) a group of soldiers are visible. One soldier (UCK) is grasping the hair of a decapitated head in one hand, and holding another decapitated head by the back of the head in the other hand. In another photo, nine soldiers are posing for the camera with one soldier holding a decapitated head. The signature of [Mr X.] was signed on the back of the photo…In the third photo, one soldier is holding a white plastic bag or similar and another soldier with a beard is placing a decapitated head inside of the bag. The last photo is a picture of [Mr X.] holding and aiming a RPG launcher, and also carrying an automatic weapon and a pistol.

1. Under the heading labelled “Abduction Phase”, the Review states:

“The investigation has proved that the decapitated heads derives [*sic.*] from two separate incidents related to the war, respectively from incidents dated the 11th of April 1999 between Prizren and Suva Reka and from the 19th of April 1999 in the village of Belanice, south of Malisevo. We have collected witness statements from VJ officers and soldiers that give a detailed insight in the preface. There seems to be no doubt about the time and place of the incidents. We have also obtained a copy of the original military report from 1999 about the incidents.”

1. Under the heading labelled “Identification of Victims”, the Review states that either UNMIK Police or Serbian authorities had taken the statements of the relatives of the victims in the photographs and the relatives had identified that the decapitated heads as belonging to Mr B.C., Mr A.O. and Mr Ž.T. Under the heading labelled “Radio Calls and Negotiation”, the Review states that UNMIK Police had collected “Witness statements…[that] all corroborate the fact that there was a phase after the incident that strongly indicates that the victims were alive at the time being.” The Review then describes the statements of ten witnesses, most of whom were former Yugoslav soldiers that served during the time period the victims were abducted and in the area of the alleged abductions. These statements allege that after Mr B.C., Mr Ž.F. and Mr D.V. were abducted on 11 April 1999, KLA members made radio contact with Yugoslav Commanders as well as phone calls to the victim’s families. One interviewee stated that one of the family members who died subsequently informed a Yugoslav Colonel that Mr Ž.F. had been alive in late April 1999, as he had called the family member on the phone, but the line went dead. Another interviewee gave a statement that the van that Mr B.C., Mr Ž.F. and Mr D.V. had been driving prior to their abduction had been found in Budakovë/Budakovo, where UNMIK Police had discovered both mass graves and evidence of a KLA detention centre.
2. Under the heading labelled “Evidence Against the Four Suspects”, the Review States:

 “[Mr X.] has not been interviewed. His father [Mr Y.] was interviewed and said the picture is a montage. [Mr Y.] has all the time been the main suspect as the man who is holding the decapitated heads … We have confiscated many pictures of [Mr X.] together with KLA soldiers as well as KLA posters from the house that supports his involvement as a combatant in the war.”

1. The Review then gives information related to Mr X. as well as other suspects and the status of the investigation related to each of them. The final two sections of the Review are labelled “Possibilities” and “Prosecutor”. Under the heading labelled, “Possibilities”, the Review states “Collect proof to the case in an operational way by being creative. Tracking down more suspects. Having the location found that is most likely to be in Albania and discover the bodies. Finding a detention center in Dukagjin zone.” Under the heading labelled “Prosecutor”, the Review states “After assessment of the report, please give feedback related to your authorization for arrest on the four suspects…”

1. The second WCIU Investigative Diary is affixed with the file number 2003-00059 and contains 40 inputs with dates ranging from 9 October 2006 through 6 December 2006. This Investigative Diary contains many listings showing that WCIU investigators took witness statements from various persons, and undertook other investigative activity during this time. For example, this Investigative Diary states that on 3 December 2006, UNMIK WCIU visited Mr X. and took his statement.
2. The third WCIU Investigative Diary is affixed with the file number 2003-00059 and it contains 59 inputs with dates ranging from 7 December 2006 through 10 May 2007. It is similar to the other two Investigative Diaries and contains information regarding many different types of investigative activities undertaken by WCIU throughout the relevant time period. For example, the Investigative Diary states that on 7 December 2006, Mr X. was interrogated officially by an UNMIK International Prosecutor with the assistance of WCIU investigators. During that interview, Mr X. gave the name of another witness, Mr M., who he claimed could provide exculpatory evidence. On 9 December 2006, UNMIK Police met with Mr X. again and had him sign his witness statement.
3. The investigative file also contains a copy of a WCIU Case Analysis Report, dated 19 October 2007 and affixed with the file number 2000-00068. The Report provides a summary of the crime and the investigative steps undertaken. At the bottom of the Report, there is a portion which has been added in handwriting which states “[r]eviewed WCU. 05/Oct/2008. There is a strong link between the disappearance of [Mr B.C., Mr D.T.] and the abduction of [Mr. Ž.F. and two other victims]. The case recorded 2003-00059 is still under investigation (War Crime Investigation)…I recommend, due to the link with ‘headless case’ (2003-00059) to join this case with it and to leave it open waiting for new information in 2003-00059.”
4. The last document in the investigative file is a copy of an undated criminal complaint, affixed with the file number 2000-00068, from the third complainant Mrs O.L. (case no. 302/09) to the International Prosecutor of the DPPO in Prizren against unidentified perpetrators concerning the abduction of Mr D.V. However, this document bears no stamp or number confirming that this complaint was filed with the DPPO in Prizren.

**F. EULEX clarification**

1. As mentioned above (see § 4), on 18 December 2009 the Panel requested EULEX to provide additional information in relation to 43 complaints before the Panel. In their response (see § 4 above), dated 23 March 2010, EULEX officers explained that they had searched the available sources, including the list of cases “found in July 2009 in the PTC building Archive room (not officially handed over from UNMIK to EULEX because no more “active” but dismissed, terminated or closed).”

1. In the same response, EULEX added that the search was not exhaustive, as the available sources did not provide information on the following:
* cases, criminal reports or information that UNMIK Police never transferred to UNMIK prosecutors, or otherwise never reached UNMIK prosecutors;
* cases which were handled by UNMIK Police and were then transferred to local police or prosecutors, without reporting to UNMIK or EULEX prosecutors;
* many cases which were handled by UNMIK prosecutors prior to creation of a centralised case registry by UNMIK DOJ, in 2003.
1. However, the search in the EULEX files provided information on only two cases listed in the Panel’s request of 18 December 2009, one of the two being the case related to the abduction and killing of Mr. Ž.F. No files or other information in relation to the other 41 cases was found. EULEX were not able to confirm if the cases for which the files were not found “were ever investigated by UNMIK Police and/or Prosecutors.”
2. **THE COMPLAINTS**
3. The complainants complain about UNMIK’s alleged failure to properly investigate the abduction and killing of Mr B.C., Mr Ž.F., Mr A.O. and Mr D.V. In this regard, the Panel deems that the complainants invoke a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
4. The complainants in cases nos 13/09, 93/09 and 302/09 also complain about the mental pain and suffering allegedly caused to themselves and their families by this situation. In this regard, they rely on Article 3 of the ECHR.
5. **THE LAW**
6. **Alleged violation of the procedural obligation underArticle 2 of the ECHR**
	1. **The scope of the Panel’s review**
7. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
8. The Panel notes that the victims in this case are members of the Yugoslav armed forces who were abducted and killed during the armed conflict in Kosovo to which the principles of International Humanitarian Law are applicable. However, the Panel’s jurisdiction is limited to complaints related to an alleged violation of human rights as defined by UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel. Accordingly, the Panel draws no conclusions about responsibilities under International Humanitarian Law.
9. 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.
10. 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 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 § 78). In the particular case of killings and disappearances in life-threatening circumstances, it is not the Panel’s role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.
3. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights “that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).
	1. **The Parties’ submissions**
4. The complainants in substance allege a violation concerning the lack of an adequate criminal investigation into the abduction and killing of Mr B.C., Mr Ž.F., Mr A.O. and Mr D.V.

*The SRSG’s comments regarding the merits of the complaints concerning Mr B.C., Mr Ž.F. and Mr D.V.*

1. In his comments on the merits of these complaints, the SRSG does not dispute that UNMIK had a responsibility to conduct an effective investigation into the abduction and killing of Mr B.C., Mr Ž.F. and Mr D.V.**,** 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 § 19 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.
2. 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.
3. 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.
4. The SRSG adds that in April 1999, “during the ongoing NATO intervention, the security situation was very tense, for both Kosovo Albanians and Kosovo Serbs within the territory of Kosovo.”
5. 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.

1. The SRSG explains that in June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of the operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština. 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. The SRSG states that, taking into account the difficulties described above, the process “for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one in the Kosovo context, and this principle has been reflected in the *Palić* case abovementioned.” The SRSG adds that the process was reliant upon a number of actors other than just UNMIK, for example the ICMP, the ICRC and local missing persons organisations.
2. 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 international police officers had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police. He 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.”
2. With regard to the particular case concerning Mr B.C., Mr Ž.F. and Mr D.V., in relation to the first leg of the obligation related to the procedural element of Article 2 of the ECHR, the SRSG asserts that “[a]s evidenced in the OMPF files, a grave site was examined in September 2009 and mortal remains of several individual persons were discovered…Immediately upon discovery of mortal remains, autopsies were conducted, and accordingly the mortal remains of Mr. B.C., Mr. Z.F. and Mr. D.V. were identified. This was done on the basis of *ante-mortem* date [sic.] collected from the family members of the missing persons at an earlier occasion, and matching DNA samples taken from the family members. The mortal remains of the three (3) victims were then handed over to the respective families in December 2009 and February 2010.”
3. The SRSG also states that “it is clearly evidenced that until September 2009, when EULEX had already taken over UNMIK’s responsibilities in the area of rule of law and justice, UNMIK’s missing person institutions were unfortunately not able to locate the mortal remains of Mr. B.C., Mr. Z.F. and Mr. D.V. This was not due to a lack of investigative action from UNMIK’s side, but due to the fact that the grave site was only discovered in September 2009.”
4. He argues that “[a]lthough UNMIK has not been successful during its deployment in locating and identifying the mortal remains of [Mr B.C., Mr Ž.F. and Mr D.V.], it can be assumed that UNMIK Police and UNMIK OMPF were at all times actively engaged in trying to identify [the victims], whenever a grave site was examined and autopsies conducted. In the absence of information to the contrary, UNMIK therefore asserts that there is no violation of Article 2 ECHR, which can be attributed to UNMIK.”
5. With respect to the investigation aimed at identifying and bringing to justice those responsible for the abduction and killing of Mr B.C., the SRSG submits that “it is clearly demonstrated from the files obtained that intensive investigative activities were carried out by UNMIK in 2000, 2003 and from 2005-2007. Taking into account the specific circumstances in post-conflict Kosovo and the practical realities of investigation work of UNMIK, the complaint of [Mrs S.C.] is therefore without grounds since UNMIK had indeed conducted an effective investigation into the victim’s disappearance.”
6. With respect to the investigation aimed at identifying and bringing to justice those responsible for the abduction and killing of Mr Ž.F. and Mr D.V., the SRSG submits that their cases “were registered with the Missing Persons Unit in 1999 and 2000, respectively. The files then evidence a gap of five (5) years until March 2005 when an Investigation Report was completed. From then, the cases remain pending but inactive, likely due to a lack of further leads or possible witnesses, until September 2009 when a grave site was discovered and human remains taken for autopsies.”
7. He also notes that “[i]n view of the vague and unknown circumstances of the disappearances of above persons and particularly taking into account that no witness could be identified who could shed more light on the incident and/or any possible perpetrators, UNMIK asserts that the UNMIK Police was not in a position to commence a proper investigation into the instant mattes [*sic.*]. There were no real leads available or any information which could evidence the circumstances of the disappearances. All persons were travelling in the same vehicle and were abducted at the same time and no trace of them was left. UNMIK therefore asserts that UNMIK Police diligently made all efforts to investigate the matters, however was not in a position to have success in respect of bringing the perpetrators to justice due to the circumstances of the disappearances and the fact that neither a witness, nor a trace or any other information was available. For this reason, there is no violation of Article 2 ECHR.”

*The SRSG’s comments regarding the merits of the complaints concerning Mr A.O.*

1. In his comments on the merits of this complaint, the SRSG does not dispute that UNMIK had a responsibility to conduct an effective investigation into the abduction and killing of Mr A.O.**,** 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 § 19 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.
2. The SRSG makes a similar argument concerning UNMIK’s responsibility stemming from the procedural obligation under Article 2 of the ECHR to conduct an effective investigation into Mr A.O.’s abduction and killing as he makes regarding the abductions and killings of Mr B.C., Mr Ž.F. and Mr D.V.; specifically, he argues that consideration should be given to the situation UNMIK faced in its initial phase of the administration of the police, prosecution and judiciary in Kosovo (see §§ 84-91 above).
3. With regard to the particular case concerning Mr A.O., in relation to the first leg of the obligation related to the procedural element of Article 2 of the ECHR, the SRSG asserts that “it is evident that UNMIK Police did indeed open and pursue an investigation into the whereabouts of [Mr A.O.] and this investigation resulted in locating the remains of [Mr A.O] on 4 December 2006, which were handed over to the family on 6 July 2007.”
4. The SRSG provides a full assessment of the various activities undertaken by UNMIK MPU and OMPF, including giving a detailed year-by-year account from 2002 through 2007 of all of the activities undertaken by UNMIK Police. The SRSG also describes the two attempts at exhumation carried by OMPF, one on 26 September 2002 which was unsuccessful, and one on 4 December 2006, which led to the discovery of two complete sets of skeletonised human remains, one of which was later determined to be the mortal remains of Mr A.O.
5. With respect to the investigation aimed at identifying and bringing to justice those responsible for the abduction and killing of Mr A.O., the SRSG provides a detailed year-by-year account from 2003 thru 2007 detailing many of the investigative activities undertaken by UNMIK Police toward that goal. He also states that “[u]nfortunately, the identity of the perpetrators of the unlawful killing had not been established by the time the file was transferred to EULEX. Relevantly, and as set out above, UNMIK Police made substantial and wide reaching investigative efforts in accordance with Article 2 procedural requirements to determine both the whereabouts and fate of [Mr A.O.] including: [l]iaising with Serbian Authorities in order to identify the victims and suspects in the photographs; [s]eeking and obtaining forensic and expert analysis of evidence; [c]onducting detailed surveillance on suspects; [s]eeking information from other international and non governmental sources; and conducting two exhumations; [c]onducting extensive research on military incidents at the time that [Mr A.O.] went missing; [c]ontacting former military commanders; and [i]nterviewing dozens of witnesses.”
6. The SRSG argues that “[i]n light of the above, it is assumed that having regard to all of the circumstances of the particular case… UNMIK Police conducted substantial and widespread investigative efforts. It is further submitted that these investigative efforts satisfy the procedural requirements of Article 2 ECHR to determine the whereabouts of Mr A.O. and to identify the perpetrators and to bring them to justice.” In conclusion, the SRSG states that “UNMIK submits that there has not been a violation of Article 2, ECHR in respect of the allegations contained in the Complaint.”
	1. **The Panel’s assessment**
7. The Panel considers that the complainants invoke a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) in that UNMIK did not conduct an effective investigation into the abduction and killing of Mr B.C., Mr Ž.F., Mr A.O and Mr D.V.
8. *Submission of relevant files*

1. At the Panel’s request, on 16 September 2011, the SRSG provided copies of the documents related to the investigations related to Mr B.C., Mr Ž.F. and Mr D.V., which UNMIK was able to recover. The SRSG also noted that there is a possibility more information, not contained in the presented documents, exists, but provided no further details. On 6 November 2014, UNMIK confirmed that the Panel had been given all relevant documents, thus the disclosure may be considered complete (see § 13 above).
2. Additionally, at the Panel’s request, on 22 August 2013, the SRSG provided copies of the documents related to the investigations related to Mr A.O., which UNMIK was able to recover. On 2 April 2015, UNMIK confirmed to the Panel that the disclosure may be considered complete (see § 16 above).
3. 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).
4. 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 Human Rights Advisory Panel [HRAP], *Bulatović*, no. 166/09, opinion of 13 November 2014, § 62).
5. 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.
6. 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).
7. *General principles concerning the obligation to conduct an effective investigation under Article 2*
8. 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.
9. 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).
10. 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 § 81 above, at § 136,ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
11. 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).
12. 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 § 81 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).
13. 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 § 112, 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 § 113 above, at § 322).
14. 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 § 113 above, at § 323).
15. 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 § 115 above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 81 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 death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 64).
16. 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 § 114 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 114 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 § 113 above, at § 324).
17. 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 § 116 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 § 111 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).
18. *Applicability of Article 2 to the Kosovo context*
19. The Panel is conscious that Mr B.C., Mr Ž.F., Mr A.O. and Mr D.V. were abducted shortly before the deployment of UNMIK in Kosovo and during the armed conflict, when crime, violence and insecurity were rife.
20. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK’s deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
21. 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.
22. 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).
23. 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 § 115 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 § 119 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 § 114 above, at §§ 85-90, 309-320 and 326-330;ECtHR, *Isayeva v. Russia*, cited in § 114 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
24. 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 § 112 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).
25. 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 § 110 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).
26. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 25 above).
27. 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.
28. 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 § 115 above, at § 70; ECtHR, *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
29. *Compliance with Article 2 in the present case*
30. The SRSG states that an effective investigation was carried out in relation to the abduction and killing of Mr B.C., Mr Ž.F. and Mr D.V.; however, the leads followed did not result in identifying the perpetrators and bringing them to justice. The SRSG also states that as a result of the investigation, Mr B.C., Mr Ž.F., Mr A.O. and Mr D.V.’s mortal remains were eventually located and identified, and that their causes of death were ascertained through autopsy.
31. The Panel notes that the investigations into the abduction and killings of the victims were initiated at different dates, based on the times that the MPU opened their cases. For Mr B.C., and Mr D.V., the investigation was initiated at some time in 1999 (see § 44 above); for Mr A.O. and for Mr Ž.F., each of the investigations was initiated at some time around 2000 (see, respectively, § 45 and § 51 above). However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 81 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 (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 115 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice, including with respect to this investigation (see § 27 above and §146below).
32. The Panel notes that the investigation into the abduction of Mr B.C., Mr Ž.F. and Mr D.V. was commenced within a year and some investigative steps were undertaken by the authorities during that time. For example, sometime in 1999, a missing person file was opened for Mr B.C. and Mr D.V. and ante-mortem information was taken from family members for identification purposes (see § 46 above). Additionally, on 20 February 2000, the MPU sent a request to all regional UNMIK Police Commanders to gather information regarding the abduction (see § 44 above). Concerning the investigation into the abduction of Mr Ž.F., the Panel notes that in 2000, a missing person file was opened for him and ante-mortem information was taken from his family members for identification purposes. Concerning the investigation into the abduction of Mr A.O., the Panel notes that in 2000, a missing person file was opened for him and ante-mortem information was taken from his family members for identification purposes (see § 51 above).
33. The Panel notes that the investigative file shows that the MPU took a significant number of investigative steps regarding the case for Mr B.C. and Mr D.V. throughout the time period from 22 February 2000 to 10 October 2001, which are noted in the first Case Continuation Report. The MPU also took investigative steps regarding the case for Mr Ž.F. throughout the time period from 28 March 2000 to 11 October 2001, which are noted in the second, third and fourth Case Continuation Reports (see § 45 above). The Panel also notes that the investigative file shows that UNMIK Police undertook some investigative activity concerning the case of Mr A.O. in 2002; specifically, OMPF exhumed a gravesite in search of Mr A.O.’s mortal remains, but did not find them at that location (see §§ 52-53 above).
34. The Panel notes that the majority of the investigative activity recorded in the file begins in 2003, after the photographs were discovered depicting a group of UCK soldiers holding decapitated heads, two of which were later determined to be those of Mr B.C. and Mr A.O. (see § 40 above). At this stage, it appears that the investigations with respect to all four victims were merged into one large investigation. The first WCIU Investigative Diary contains 50 inputs with dates ranging from 24 August 2003 until 26 November 2003, with each input listing an investigative activity undertaken within that time period. The Investigative Diary lists numerous witness interviews, searches and evidence seizures undertaken by UNMIK police between 24 August 2003 until 26 November 2003 (see § 58 above). The Panel considers that it is clear that the intensity of the investigation increased after August 2003, when the photographs were discovered (and subsequently published in the Serbian media). The Panel wonders whether UNMIK Police would have been more successful in the investigation had they undertaken the same amount of investigative activity from its outset instead of waiting until 2003.
35. The Panel also notes that besides the investigative activity from 1999-2003 that has described above, the file contains numerous other investigative documents from 2004 and 2005. These documents describe further investigative activity that took place during this time, including: UNMIK Police contacting the relatives of Mr B.C., Mr D.V., Mr A.O. and Mr. Ž.F. (see § 60 above) and liaising with the Serbian authorities on multiple occasions to get witness statements of former Yugoslav officers that were on duty at the time of the victims’ abductions (see §§ 63- 65 above).
36. Coming to the period under the jurisdiction of the Panel, starting on 23 April 2005, the Panel notes that the file shows that a considerable amount of investigative activity continued to be undertaken during this period. The file contains a CCIU document entitled “Analysis of CCIU 2003-00059 by [police investigator]”, dated 20 August 2005, which provides descriptions of five witness statements that CCIU took as part of the investigation. This includes the witness statement of Mrs S.C. (the complainant in case no. 13/09), which was obtained in Belgrade in July 2005 (see § 60 above). The file also contains an undated document entitled “WCIU Sub Document Index-Witnesses”, which is affixed with the file number 2003/00059 and lists 27 witness statements collected by WCIU investigators through to the end of 2005, that were taken by themselves or by the Serbian authorities (see § 60 above). Similarly, the second and third Investigative Diaries in the file contain 99 inputs between them, with each input listing an investigative activity undertaken by UNMIK Police between the dates 9 October 2006 through 6 December 2006, and 7 December 2006 through 10 May 2007 (see §§ 66-67 above). These activities include numerous witness interviews conducted and other means of evidence collection, as well as meetings between the UNMIK international prosecutor and the UNMIK Police concerning the status of the investigation.
37. With regard to the discovery of the whereabouts or determining the fate of Mr B.C., Mr Ž.F., Mr A.O. and Mr D.V., the Panel notes that UNMIK conducted a substantial amount of investigative effort in this regard. To this end, with regard to the discovery, identification and handover of the mortal remains of Mr A.O., the Panel notes that the file shows that on 18 June 2007, OMPF issued an Identification Certificate and Death Certificate for Mr A.O. and on 6 July 2007, OMPF returned his mortal remains to his family (see § 55 above). Although this must be considered in itself an achievement, the Panel recalls that the procedural obligation under Article 2 did not come to an end with the discovery, identification and subsequent handover of Mr A.O.’s mortal remains, as the perpetrators of his abduction and killing had not been established.
38. Concerning the discovery of the whereabouts or determining the fate of Mr B.C., Mr Ž.F., and Mr D.V., the Panel notes that although UNMIK performed a significant amount of activity in this regard from 1999 onwards, it was only in in September 2009, after UNMIK had handed over all of its criminal cases to EULEX (see § 28 above), that five sets of skeletonised human remains belonging to the five Yugoslav soldiers who were abducted on 11 April 1999 were discovered in a grave site called “Kleçkë/Klečka” in Lipjan/Lipljan Municipality. These were later identified through DNA testing to include those of Mr B.C., Mr D.V. and Mr Ž.F. (see § 35 above). As such, the Panel notes that, although the discovery and identification of the mortal remains of Mr B.C., Mr D.V. and Mr Ž.F. must be considered an achievement in accordance with the procedural requirements of Article 2 of the ECHR, this discovery occurred outside of the Panel’s jurisdiction and outside of UNMIK’s competency.
39. In addition, the Panel has already stated that, as long as those responsible for the crime had not been located, UNMIK was obligated to use the means at its disposal to regularly review the progress of the investigation and to ensure that no new facts had come to light, as well as to inform the victims’ relatives regarding any possible new leads of enquiry (see § 119 above). The Panel notes that the file shows that UNMIK Police produced a WCIU Case Analysis Report in October 2007. Again in 2008, the WCIU reviewed the file and determined that it should remain open (see § 69 above). Thus, although there had not been any new developments, the case was kept under review.
40. Noting all of the investigative steps undertaken by UNMIK Police (see §§ 132-137 above), the Panel deems that the investigation sufficiently meets the standards of promptness and thoroughness required by Article 2 of the ECHR.
41. With regard to public scrutiny, the Panel notes that UNMIK Police communicated with the complainants on numerous occasions, such as when the MPU took ante-mortem information in 1999 for Mr B.C., Mr D.V., in 2000 for Mr A.O. and in 2000 for Mr Ž.F. (see § 46 above), and, between 2003 and 2006, when UNMIK Police took numerous witness statements from the complainants and other relatives of the victims (see § 60 above). The Panel notes that the file does not contain any evidence of UNMIK Police communicating with the complainants in 2007 or 2008, with the exception of the return of the mortal remains of Mr A.O. to his family on 6 July 2007. Notwithstanding, the Panel finds that there were sufficient contacts made between the UNMIK Police and the complainants in the present case such that the applicants cannot be considered to have been excluded from the investigation process to such a degree as would infringe the minimum standard of Article 2. Therefore, although the Panel considers that further contact with the families could have been made, the Panel deems that the investigation meets the standard of public scrutiny as required by Article 2 of the ECHR (see ECtHR [GC], *Mustafa Tunç and Fecire Tunç v. Turkey*, no. 24014/05, judgment of 14 April 2005, §§ 210 - 216).
42. In these circumstances, the Panel can accept the SRSG’s assertion that UNMIK Police made substantial and wide reaching investigative efforts in accordance with Article 2 procedural requirements to determine both the whereabouts and fate of the victims including: “[l]iaising with Serbian Authorities in order to identify the victims and suspects in the photographs; [s]eeking and obtaining forensic and expert analysis of evidence…[s]eeking information from other international and non governmental sources; and conducting two exhumations; [c]onducting extensive research on military incidents at the time that [the victims] went missing; [c]ontacting former military commanders; and [i]nterviewing dozens of witnesses” (see § 102 above). The Panel notes that the file evidences that UNMIK International Prosecutors played an integral role in following investigative leads.
43. Overall, the Panel considers that the high volume of activity undertaken by UNMIK Police, especially during the period within the Panel’s jurisdiction, has the qualities of an effective investigation.
44. As such, the Panel concludes that, in these circumstances, there has been no violation of Article 2, procedural limb, of the ECHR.
45. The Panel regrets that this investigation was not able to result in the prosecution of the perpetrators of Mr B.C., Mr D.V., Mr A.O. and Mr Ž.F.’s abduction and killing, before the case was handed over to EULEX. However, the Panel understands that the investigation is still open and is being pursued by the EULEX authorities. Therefore, the Panel expects that EULEX will endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to continue the case in compliance with the requirements of an effective investigation as envisaged by Article 2, such that the circumstances surrounding the abduction and killing of Mr B.C., Mr D.V., Mr A.O. and Mr Ž.F. will be established and that the possible perpetrators will be brought to justice. The Panel also expects that EULEX will inform the complainants and/or other next-of-kin of such proceedings and relevant documents shall be disclosed to them, as necessary.
46. **Alleged violation of Article 3 of the ECHR**
47. The complainants state that the lack of information and uncertainty surrounding the abduction and killing of Mr B.C., Mr Ž.F. and Mr D.V. caused mental suffering to themselves and their families. The Panel considers in this respect that the complainants invoke Article 3 of the ECHR prohibiting inhuman and degrading treatment.
48. **The scope of the Panel’s review**
49. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 75 - 81 above).
50. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, “the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 126 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 115 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41). “It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct” (see, among others, ECtHR, *Er and Others v. Turkey*, no. 23016/04, judgment of 31 July 2012, § 94).
51. Lastly, where mental suffering caused by the authorities’ reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (see ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, §§ 147-148).
52. **The Panel’s assessment**
53. The Panel recalls that it was established above that there was no failure in relation to the procedural obligation under Article 2 of the ECHR on the part of UNMIK. In particular, the Panel found that that there were sufficient contacts made between the UNMIK Police and the complainants to meet the standard of public scrutiny as required by Article 2 of the ECHR.
54. The Panel has no doubts as to the profound suffering caused by this situation to the complainants, especially considering the heinous nature of the violence and the leaking of the photographs to the media. Nevertheless, given the particular circumstances of the case and having found no violation of the procedural element of Article 2 of the ECHR by UNMIK, the Panel considers that there is no basis upon which UNMIK’s behaviour amounted to inhumane or degrading treatment in violation of Article 3 of the ECHR.

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN NO VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN NO VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.**

 Andrey Antonov Marek Nowicki

 Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit

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

**DOJ** - Department of Justice

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

**ECHR** - European Convention on Human Rights

**ECtHR**- European Court of Human Rights

**EU** – European Union

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

**FRY** - Federal Republic of Yugoslavia

**HRAP** - Human Rights Advisory Panel

**HRC** – United Nation Human Rights Committee

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

**ICMP** - International Commission of Missing Persons

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

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

**IPO** – International Police Officer

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

**KLA** - Kosovo Liberation Army

**MoU -** Memorandum of Understanding

**MPU** - Missing Persons Unit

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

**NATO** - North Atlantic Treaty Organization

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

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

**RIU -** Regional Investigations Unit

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

**UN** - United Nations

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

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

**VRIC** - Victim Recovery and Identification Commission

**WCIU** - War Crimes Investigation Unit

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
2. The references drawn upon by the Panel in setting out this general background include: OSCE, “As Seen, as Told”, Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, “Abductions and Disappearances of non-Albanians in Kosovo” (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos. 71412/01 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. These two soldiers are not part of the complaints before the Panel. [↑](#footnote-ref-3)
4. The OMPF database is not open to public. The Panel accessed it with regard to this case on 10 April 2015. [↑](#footnote-ref-4)
5. The ICMP database is available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 10 April 2015). [↑](#footnote-ref-5)
6. The OMPF database is not open to public. The Panel accessed it with regard to this case on 10 April 2015. [↑](#footnote-ref-6)
7. The ICMP database is available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 10 April 2015). [↑](#footnote-ref-7)