

**OPINION**

**Date of adoption: 14 December 2014**

**Cases Nos 72/09, 73/09, 74/09, 75/09, 76/09, 78/09, 95/09 and 96/09**

**Lela NIKOLIĆ, Rosanda KABAŠ and Milan PETROVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 14 December 2014,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

Having considered the aforementioned complaints, 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**

*Complaints of Ms Lela Nikolić (cases nos 72/09, 73/09, 74/09, 75/09 and 76/09)*

1. The five complaints of Ms Lela Nikolić (cases nos 72/09, 73/09, 74/09, 75/09 and 76/09) were introduced on 15 April 2009 and registered on 30 April 2009.
2. On 24 July 2009, the complaints were communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on admissibility and merits. In response, by letter dated 5 August 2009, the SRSG advised the Panel that UNMIK could not provide comments because of the lack of facts presented by the complainant.
3. On 24 October 2009, the Panel decided to join the five complaints of Ms Nikolić (cases nos 72/09, 73/09, 74/09, 75/09 and 76/09), pursuant to Rule 20 of the Panel’s Rules of Procedure.
4. On 21 April 2010, the Panel requested the complainant to provide additional information. The complainant has not responded to these requests.
5. On 4 May 2012, the complaints of Ms Nikolić (cases nos 72/09, 73/09, 74/09, 75/09 and 76/09) were re-communicated to the SRSG, for UNMIK’s comments on admissibility.
6. On 13 June 2012, the SRSG provided UNMIK’s response.
7. On 21 June 2012, the Panel declared the complaints of Ms Nikolić (cases nos 72/09, 73/09, 74/09, 75/09 and 76/09) admissible.
8. On 22 June 2012, the Panel forwarded its decision on admissibility of the complaints of Ms Nikolić (cases nos 72/09, 73/09, 74/09, 75/09 and 76/09) to the SRSG requesting UNMIK’s comments on the merits of the cases, as well as copies of the investigative files relevant to the case.
9. On 30 May 2014, the SRSG provided UNMIK’s response, together with the copies of the available relevant investigative documents.
10. On 19 November 2014, upon a request of the Panel’s Secretariat, the European Union Rule of Law Mission in Kosovo (EULEX) Department of Forensic Medicine submitted a clarification to the Panel.

*Complaints of Ms Rosanda Kabaš (case no. 78/09)*

1. The complaint of Ms Rosanda Kabaš (case no. 78/09) was introduced on 15 April 2009 and registered on 30 April 2009.
2. On 24 July 2009, the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK’s comments on admissibility and merits. In response, by letter dated 3 August 2009, the SRSG advised the Panel that UNMIK could not provide comments because of the lack of facts presented by the complainant.
3. On 9 December 2009, the Panel requested the complainant to provide additional information. On 20 April 2011 the Panel repeated its request. The complainant has not responded to these requests.
4. On 18 December 2009, the Panel requested from EULEX the information with regard to forty three complaints in relation to missing persons filed before the Panel, including the complaint of Ms Kabaš.
5. On 23 March 2010, EULEX provided a response to the Panel’s request of 18 December 2009.
6. On 3 October 2011, Ms Kabaš submitted additional information to the Panel.
7. Upon the Panel’s request, on 8 February 2012, UNMIK Police submitted additional information related to the complaint of Ms Kabaš.
8. On 24 February 2012, the complaint was re-communicated to the SRSG, for UNMIK’s comments on admissibility.
9. On 28 March 2012, the SRSG provided UNMIK’s response with regard to the admissibility of the complaint.
10. On 11 May 2012, the Panel declared the complaint of Ms Kabaš (case no. 78/09) admissible.
11. On 17 May 2012, the Panel forwarded its decision on admissibility of the complaint of Ms Kabaš (case no. 78/09) to the SRSG, requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
12. On 27 March 2013, the SRSG provided UNMIK’s response, together with the copies of the available relevant investigative documents.

*Complaints of Mr Milan Petrović (cases nos 95/09 and 96/09)*

1. The complaints of Mr Milan Petrović (cases nos 95/09 and 96/09) were introduced on 8 April 2009 and registered on 30 April 2009.
2. On 24 October 2009, the Panel decided to join the two complaints of Mr Milan Petrović pursuant to Rule 20 of the Panel’s Rules of Procedure.
3. On 10 March 2010, the Panel requested further information from Mr Milan Petrović.
4. On 22 March 2010, Mr Milan Petrović responded to the Panel’s request.
5. On 16 June 2011, the complaints of Mr Milan Petrović (cases nos 95/09 and 96/09) were communicated to the SRSG, for UNMIK’s comments on its admissibility.
6. On 2 September 2011, the SRSG presented UNMIK’s response.
7. On 27 October 2011, the Panel declared the complaints of Mr Milan Petrović (cases nos 95/09 and 96/09) admissible.
8. On 28 October 2011, the Panel forwarded its decision on admissibility of the complaints of Mr Milan Petrović to the SRSG, requesting UNMIK’s comments on the merits of the complaints, as well as copies of the investigative files relevant to the case.
9. On 2 December 2011, the SRSG provided UNMIK’s response, together with the copies of the available relevant investigative documents.

*Return of investigative files related to the cases nos 73/09, 74/09 and 78/09 from the UN Headquarters*

1. Following the Panel’s inquiries, on 4 October 2012, UNMIK requested the Archives and Records Management Section of the United Nations’ (UN) Headquarters in New York to locate and return to UNMIK a number of investigative files related to the complaints before the Panel.
2. On 14 December 2012, UNMIK received the requested investigative files from the UN Headquarters in New York. On 17 December 2012, UNMIK presented those documents, including some documents related to two of the complaints of Ms Lela Nikolić (nos 73/09 and 74/09) and the complaint of Ms Rosanda Kabaš (no. 78/09), to the Panel.

*Joinder of all complaints (nos 72/09, 73/09, 74/09, 75/09, 76/09, 78/09, 95/09 and 96/09)*

1. On 21 June 2012, the Panel decided to join the five complaints of Ms Lela Nikolić (cases nos 72/09, 73/09, 74/09, 75/09 and 76/09), with the complaint of Ms Rosanda Kabaš (case no. 78/09) and the two complaints ofMr Milan Petrović (cases nos 95/09 and 96/09), pursuant to Rule 20 of the Panel’s Rules of Procedure.

*Additional confirmations in relation to all cases*

1. On 18 November 2014, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning all the cases could be considered final.
2. On 20 November 2014, UNMIK provided its response.
3. **THE FACTS**
4. **General background[[2]](#footnote-2)**
5. The events at issue took place in the territory of Kosovo after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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”.
14. 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 chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document reiterating, among other things, its commitment to solving the fate of missing persons from all communities, and recognizing that the exhumation and identification programme is only a part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
15. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with EULEX assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
16. On the same date, UNMIK and EULEX signed a Memorandum of Understanding on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
17. **Circumstances surrounding the abduction and disappearance of the complainants’ close relatives**
	1. *Abduction and disappearance of the Šutaković family (cases nos 72/09, 73/09, 74/09, 75/09 and 76/09)*
18. The first complainant, Ms Lela Nikolić, is a former resident of Kosovo, currently living in Serbia proper.
19. She informs the Panel that on 12 June 1999 her stepmother, Mrs Darinka Šutaković (case no. 72/09), father, Mr Nedeljko Šutaković (case no. 75/09), and their three sons: Mr Radovan Šutaković, 10 years old (case no. 73/09), Mr Ðorđe Šutaković, 16 years old (case no. 74/09) and Mr Aleksandar Šutaković, 18 years old (case no. 76/09) were abducted from their home in Gjakovë/Đakovica by members of the KLA. Since that time whereabouts of them all have remained unknown.
20. The complainant states that their abduction was reported to KFOR, UNMIK, the Yugoslav Red Cross, the Serbian Ministry of Internal Affairs, and other organisations. She also states that the matter was reported to the International Public Prosecutor in Prishtinё/Priština, but presents no specific details in this regard.
21. Their names appear in the list of persons which went missing in relation to the conflict in Kosovo, forwarded by the ICRC to UNMIK Police on 29 January 2002, as well as in the electronic database compiled by the UNMIK OMPF[[3]](#footnote-3). The ICRC tracing requests for all five above-mentioned family members also remain open[[4]](#footnote-4).
22. The online list of missing persons maintained by the ICMP[[5]](#footnote-5) informs in relation to all of them that “DNA match not found.” The entries in their regard slightly differ in the following:
* for Mrs Darinka Šutaković: “Reported date of disappearance: 11 June 1999” and “Not Enough Reference Samples Collected”;
* for Mr Nedeljko Šutaković: “Reported date of disappearance: 1 June 1999” and “Sufficient Reference Samples Collected”;
* for Mr Radovan[[6]](#footnote-6) Šutaković, Mr Ðorđe Šutaković and Mr Aleksandar Šutaković: “Reported date of disappearance: 1 June 1999” and “Not Enough Reference Samples Collected”.

* 1. *Abduction and disappearance of Mr Milenko Kabaš (case no. 78/09)*
1. Ms Rosanda Kabaš, the second complainant, states that her brother, Mr MilenkoKabaš (or Kabaši, Kabashi), was abducted from the complainant’s apartment in Gjakovë/Đakovica, in June 1999. Since that time his whereabouts have remained unknown.
2. The complainant adds that a certain Kosovo Albanian, F.D., was involved in the abduction of her brother.
3. Ms Kabaš states that the abduction was reported to the Italian KFOR, the ICRC, the Yugoslav Red Cross and unidentified Serbian state institutions. She likewise states that the matter was reported to the International Public Prosecutor in Prishtinё/Priština, but presents no specific details.
4. Ms Kabaš had also given a statement to the Humanitarian Law Center (HLC), which reads as follows:

“**Kabaš, Milenko (Kabash, Milenko)** (M, 41), mixed Albanian/Serb parentage, from Djakovica – abducted by the KLA on 25 June 1999 from his sister’s apartment in Djakovica.

Kabaš’s sister recounted that KLA members came to the apartment of her neighbors on 25 June and started searching it. She went to see what was going on. The KLA men, who were in civilian clothes, seized the neighbor’s weapons and left. While she was still with the neighbors, she heard a noise from her own fifth floor. She returned to her apartment and saw that the door was open and her brother was no longer there. Through the window, she saw three KLA members in camouflage uniforms leading away her brother, who was holding a bloody towel to the left side of his face. She identified one of the KLA men as Faton. At gunpoint, the KLA men forced Kabaš to put his hands against the wall, searched him, bundled him into a car and drove away. When she went downstairs, an Albanian neighbor told her that her brother had resisted the KLA men and was wounded in the left ear, and that he had tossed him a towel to staunch the heavy bleeding. Kabaš’s sister immediately reported the abduction to KFOR.

On 13 June [sic.], the same KLA men came to the building again, and encountered Kabaš’s sister at the entrance. Obviously not recognizing her as the woman they were looking for, they asked if she knew where the “Shkija”[[7]](#footnote-7) from the fifth floor was. She escaped being taken herself by replying in Albanian that the woman they wanted had just gone into the neighboring building. As soon as the KLA men left, she sought refuge with neighbors from where she called an Albanian friend who came for her and took her to her own apartment on the other side of town. She fled Kosovo to Serbia two days later.

Source: HLC, witness statement.”[[8]](#footnote-8)

1. As mentioned above (see § 17), at the Panel’s request, UNMIK Police went to KFOR Regional Headquarters “West” and checked their archives for information related to the abduction and disappearance of Mr Milenko Kabaš. In a memorandum dated 7 February 2012, KFOR confirmed that they possess no information in this regard, except for the above statement of Ms Rosanda Kabaš to the HLC.
2. The ICRC tracing request for Mr Kabaš remains open[[9]](#footnote-9). His name also appears in the list of missing persons, which was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001. Likewise, his name is in the database compiled by the UNMIK OMPF[[10]](#footnote-10).
3. The online list of missing persons maintained by the ICMP[[11]](#footnote-11) states in his respect: “Reported date of disappearance: 1 June 1999”, “Not Enough Reference Samples Collected” and “DNA match not found.”
	1. *Abduction and disappearance of Mr Mića Petrović and Mrs Radmila Petrović (cases nos 95/09 and 96/09)*
4. Mr Milan Petrović, the third complainant, states that his parents, Mr Mića[[12]](#footnote-12) Petrović (a retired police officer) and Mrs Radmila Petrović, were held by KLA members, H.H., A.Sh., and F.D., in their own apartment in Gjakovë/Ðakovica, from 14 June 1999. According to the complainant, the last of the three KLA members, F.D., remained in the apartment, guarding Mr and Mrs Petrović. After two or three weeks of such a detention, they were taken out of the apartment, put in a truck, and taken in an unknown direction. Since that time their whereabouts have remained unknown.
5. The complainant states that the disappearance of his parents was reported to UNMIK, the Yugoslav Red Cross, the Serbian Ministry of Internal Affairs (MUP), as well as the Serbian War Crimes Prosecutor’s Office.
6. The complainant adds that from that time, a relative of H.H. had illegally occupied the apartment of Mr and Mrs Petrović in Gjakovë/Ðakovica.
7. The complainant provided to the Panel copies a number of documents, which have very detailed description of the events surrounding the abduction of Mr and Mrs Petrović, as well as a number of other people who were also abducted from Gjakovë/Ðakovica around the same time, ostensibly by the same group of KLA members. These documents are:
* a certificate, dated 11 September 1999, issued by the Center for Peace and Tolerance in Prishtinё/Priština, which reads:

“As per your request in relation with below mentioned persons [Mr and Mrs Petrović], we would like to inform you that they are healthy and alive and that they are in a camp or in captivity. We know this from the ICRC and KFOR, who got this information through negotiations.”

* an undated report about the abduction of his parents;
* copies of his public announcements, in Serbian and Albanian, offering a reward of 5,000 deutschemarks for help in finding his parents;
* a request from the Manager of the Serbian Team for liaison with KFOR, addressed to KFOR and UNMIK Police, dated 7 May 2001; it contains information about the circumstances of the abduction of Mr and Mrs Petrović, and a request for investigation into the matter. According to this request, the commander of the KLA unit responsible for the abduction, N.A., was in May 2001 detained by UNMIK for an attempted murder;
* a confirmation of the Yugoslav Red Cross, dated 21 June 2002, confirming that Mr and Mrs Petrović are registered as missing persons since 7 August 1999;
* a statement of Ms Rosanda Kabaš, given on 19 December 2002 to the Serbian MUP in Jagodina, Serbia proper;
* his criminal report against H.H., A.Sh. and F.D. responsible for the abduction of Mr and Mrs Petrović, addressed to the District Public Prosecutor’s Office (DPPO) in Pejё/Peć, located in Jagodina, Serbia proper (MUP case no. PU-32/04, of 28 May 2004, DPPO case no 230-1402/04);
* his detailed statement given on 15 July 2008 to the Serbian War Crimes Prosecutor;
1. The ICRC’s tracing requests for Mr and Mrs Petrović remain open[[13]](#footnote-13). Their names also appear in the list of missing persons, which was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001. Likewise, their names are mentioned in the database compiled by the UNMIK OMPF[[14]](#footnote-14).
2. The entries in the online list of missing persons maintained by the ICMP[[15]](#footnote-15) related to them read in relevant parts: “Reported date of disappearance: 6 July 1999”, “Sufficient Reference Samples Collected” and “DNA match not found.”
3. **The investigation**
4. *Disclosure of relevant files*
5. In the present case, the Panel received from UNMIK investigative documents previously held by the UNMIK OMPF and the UNMIK Police WCIU, obtained by UNMIK from EULEX. In addition, on 17 December 2012, the Panel received some investigative documents in relation to the investigation into the abduction and disappearance of Mr Radovan Šutaković, Mr Ðorđe Šutaković and Mr Milenko Kabaš, which were returned from the UN Headquarters’ archives in New York (see §§ 32 - 33 above). Although the SRSG suggested that more documents in relation to this case may exist, on 20 November 2014, UNMIK confirmed to the Panel that no more files have been obtained.

1. Concerning disclosure of the information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that, although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.
2. *Investigation in relation to Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković and Mr Aleksandar Šutaković*
3. The OMPF file in relation to Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković and Mr Aleksandar Šutaković contains five handwritten undated Victim Identification Forms. No photographs or identification documents are attached to any of these forms:
* The form in relation to Mrs Darinka Šutaković, apparently completed by the ICRC, provides her brief physical description and provides the name and contact details of her brother as her next of kin. The form is cross-referenced to the MPU case no. 2003-000051.
* The form in relation to Mr Nedeljko Šutaković, apparently completed by the ICRC, provides his brief physical description, lists the other four family members as persons who disappeared with him, and provides names and contact details of his nephew and niece, as his next of kin. The form is cross-referenced to the MPU case no. 2003-000640.
* The form in relation to Mr Radovan Šutaković, apparently completed by the ICRC, provides his brief physical description and provides the name and contact details of his uncle as his next of kin. The form is cross-referenced to the MPU case no. 2003-000050.
* The form in relation to Mr Ðorđe Šutaković, apparently completed by the ICRC, provides his brief physical description and provides the name and contact details of his uncle as his next of kin. The form is cross-referenced to the MPU case no. 2003-000057.
* The form in relation to Mr Aleksandar Šutaković, apparently completed by the ICRC, provides his brief physical description and provides the name and contact details of his uncle as his next of kin. The form is cross-referenced to the MPU case no. 2003-000063.
1. The part of the file, previously held by UNMIK Police WCIU starts with five one-page UNMIK Police MPU Case Continuation Reports (CCR) on the cases related to the complainant’s relatives. Their details are:
* Mrs Darinka Šutaković, MPU case no 2003-000051, has two entries, both of 1 April 2003: “Input DB – OK” and “Input DVI – OK”;
* Mr Nedeljko Šutaković, MPU case no 2002-000640, has two entries, both of 2 September 2002: “DB Input – OK” and “DVI Input– OK”;
* Mr Radovan Šutaković, MPU case no 2003-000050, has two entries, both of 31 March 2003: “Input DB – OK” and “Input DVI– OK”;
* Mr Ðorđe Šutaković, MPU case no 2003-000057, has one entry, of 2 April 2003: “DB & DVI Input – OK”;
* Mr Aleksandar Šutaković, MPU case no 2003-000063, has one entry, of 3 April 2003: “DB & DVI Input – OK”.
1. Further, the file contains five practically identical MPU Ante-Mortem Investigation Reports, commonly referenced to the MPU case no. 1080/INV/04, all started on 23 December 2004 and completed on the same day:
* for Mrs Darinka Šutaković, cross-referenced to the MPU case no 2003-000051;
* for Mr Nedeljko Šutaković, cross-referenced to the MPU case no 2002-000640;
* for Mr Radovan Šutaković, cross-referenced to the MPU case no 2003-000050;
* for Mr Ðorđe Šutaković, cross-referenced to the MPU case no 2003-000057;
* for Mr Aleksandar Šutaković, cross-referenced to the MPU case no 2003-000063.
1. All of them contain the name and contact details of a certain D.G., identified as “nephew [sic.] of SUTAKOVIC Nedeljko” as a witness. The document further reads: “We contact relatives [D.G.], her address is ORAHOVAC. We contact her by the telephone, she don`t want to have family visit.” Nevertheless, the field “Statement of witness” reflects the following:
2. “SUTAKOVIC family are with other Serbian citizens of Djakovica escape in the Orthodox Church in Djakovica. SUTAKOVIC Nedeljko went back home to get some stuff and he never return. His wife Darinka and his three children Radoman, Djordje and Aleksandar went after him to see what happened. Nobody ever return. The wife who could have some information doesn’t want to talk. She was in the church in same time as SUTAKOVIC family. Her name is [K.K.] and she live in asylum centre in [K], Serbia. The future of SUTAKOVIC family is unknown.”
3. All five reports conclude with the same statement:

“After investigations, it’s impossible at this time to find an impartial witness around the place event. No information leading to a possible MP’s location. This case should remain open pending within the WCU.”

1. *Investigation in relation to Mr Milenko Kabaš (case no. 2001-000984)*

*UNMIK Police and OMPF files*

1. An MPU CCR on the case 2001-000984 has two entries: of 11 March 2001, “DB Input According to HCL” and of 26 May 2002, “DVI Input – OK”. Attached to this form is a photocopy of a page from the HLC book related to the missing persons in Kosovo, with the complete statement of Ms Rosanda Kabaš, as shown before (see § 57).
2. The file further contains a Victim Identification Form for Mr Milenko Kabaš, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 58 above); it is completed by hand-writing, in Serbian. Besides his personal details and ante-mortem description, it provides the name and complete contact details of his sister (the complainant, Ms Rosanda Kabaš). His photograph is attached to this form.
3. Another Victim Identification Form, completed in English, is dated 24 January 2005 and is cross-referenced to a case no. 2001-000984. It contains the same information as the form above.
4. By a memorandum, dated 25 June 2003, addressed “to whom it may concern”, the UNMIK Police Chief Identifications requested that “in case one of the Missing persons below will be identified, pls contact the CCIU”; the list has 11 names, including Mr Milenko Kabaš.
5. Also in a file is an undated typed record of a statement by Ms Rosanda Kabaš, cross-referenced to the case no. 2001-000984, where she provided details of what she witnessed during the abduction of her brother by the KLA. She stated that she identified one of the abductors as F.D., who worked “as Professor in Elementary School in Djakovica”. The statement is not signed; it is also not clear who had recorded it.
6. The file further contains a printout from the Kosovo Police Information System database, dated 8 April 2005, containing personal identification details of the suspect, F.D.
7. A one-page printout from the MPU database on the case no. 0505/INV/05, dated 11 April 2005, in relation to the disappearance of Mr Milenko Kabaš, in the form “Invest. Notes”, provides details of his abduction and confirms the identification of the suspect by his sister. It also mentions the workplace of the suspect, stated by the witness (see above).
8. An MPU Ante-Mortem Investigation Report on the MPU case no. 0505/INV/05 is cross-referenced to a case no. 2000-001631. This report was initiated on 10 April 2005 and completed on the same day. On the front page of the report, the complainant, Ms Rosanda Kabaš, is named as a witness, while F.D. as a suspect; the contact details for both are also provided.
9. This report provides a very brief description of the abduction of Mr Milenko Kabaš by KLA members and a verbatim repetition of the above-referred statement of Ms Rosanda Kabaš (see § 79). The report’s field “Witness Interviewed” reads “None”. At the conclusion of this report, the investigator wrote: “There is no information leading to a possible MP’s location. The case should remain open inactive with the WCU.” The status of the case is put as “inactive”.

*EULEX clarification*

1. As mentioned above (see § 14), on 18 December 2009 the Panel requested EULEX to provide additional information in relation to 43 complaints before the Panel, including the complaint of Ms Rosanda Kabaš. In their response, 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).”
2. 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.
3. However, the search in the EULEX files provided information on only two cases listed in the Panel’s request of 18 December 2009. No files or other information in relation to the other 41 cases, including the complaint of Ms Rosanda Kabaš, 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.”
4. *Investigation in relation to Mr and Mrs Petrović (cases nos 2000-000310, 2003-00006 and 2003-00007)*
5. The oldest document in the file is a Human Rights Interview/Incident Form, completed by the OSCE Mission in Kosovo on 23 December 1999 (reference no. GN/ST/023/99). It transpires from the text that on that day a distant relative of Mr and Mrs Petrović reported their disappearance to the OSCE office in Shtërpcë/Štrpce. She provided only brief details of their disappearance, although naming two potential eye-witnesses, A.N. and R.N. The name and the complete contact details of the reporting party are in this form.
6. Attached to this form is a copy of Mr Milan Petrović’s “Report on Missing Persons”, providing the details of their abduction and their description, with photographs attached to it, as well as a copy of his above-mentioned public announcement, where he offered a reward for assistance in finding his parents (see § 64 above).
7. An MPU CCR on the case no. 2000-000310 has four entries: of 9 May 2000, “Input DB – OK, of 21 December 2000, “Add page from ICRC”, and two additional inputs to the MPU database, both on 18 February 2002.
8. The file further contains two Victim Identification Form for Mr and Mrs Petrović, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 65 above), both completed by hand-writing, in Serbian, and cross referenced to the MPU case no. 2000-010310. Besides their personal details and ante-mortem description, they provide the name and complete contact details of the complainant (Mr Milan Petrović), and two more relatives of his missing parents. A number of their photographs are attached to these forms. In addition, the forms state: “There is information that they had been killed and thrown in the river from the ‘Terzijski’ bridge, Djakovica.”
9. The file further contains a letter from the Serbian MUP, dated 30 January 2003, to UNMIK Police. It provides information about the abduction of the Sutaković family, Milenko Kabaš, Mr and Mrs Petrović and Mrs Dragica Petrićević, who all lived in the same building in Gjakovë/Đakovica. UNMIK Police was requested to investigate this matter and inform the MUP back on the results.
10. The next document in the file is an undated WCIU Case Report in relation to the case no. 2003-00007; it indicates that the record was initiated on 24 February 2003 and updated for the last time on 26 June 2003. It reflects the type of crime as “War Crime – Murder – Mass grave”. It mentions *Mr and Mrs Petrović* as victims; the field “Status Notes” reads “Same as 2003-00005”. The “Summary” part of this report reads:

“Case opened following a report from the Ministry of Internal Affairs, Serbia.

 On 10th March 2003, the case was assigned to G.M.

 On 26th June 2003, the case was closed, no further action required, as this is the case No. 2003-00005.”

1. An MPU Ante-Mortem Investigation Report on the MPU case no. 0067/INV/05 is cross-referenced to a case no. 2000-000310. This report was initiated on 6 April 2004 and completed on the same day. On the front page of the report, an UNMIK Police liaison officer in Belgrade, is mentioned as a witness. The field “Background of the case” reads: “The couple was arrested and kidnapped by men wearing ECK-uniform on 7th august 1999. See enclosed report under MPU-number.” The field “Further Investigation” states the following: “K.N., MPU Belgrade informed that the family members still have not had any news to their destiny.”
2. At the end of this report, the investigator concludes that “As there is no further information with regards to the fate of the MP no further investigation is presently possible however the file should remain open in case further information would appear.” The case’s status is “Case Pending for further information”.
3. The file further contains a Ruling to Dismiss the Criminal Report, dated 22 July 2009, no. PPS.197/09, by which an International Prosecutor of the Kosovo’s Special Prosecution Office (SPRK) dismissed the police criminal report of 24 February 2003 on the case no 2003-00006. The said police criminal report is not in the file. The Ruling itself is not stamped or signed by the prosecutor.
4. The three persons cited in the Ruling, I.D., A.S. and F.D., were suspected of:

“- On June 1999, in Djakovica, Peja/Pec, War crime against the civilian population in

 violation of article 142 CCSFRY, 120-121 PCCK, punishable up to 5 years

 imprisonment[[16]](#footnote-16),

 - Kidnapping in violation of article 64 CLS[[17]](#footnote-17), 159 PCCK punishable 6 months up to

 5 years of imprisonment.

1. The Ruling provides a brief description of the abduction of Mr and Mrs Petrović, referring to the above-mentioned letter from the Serbian MUP to UNMIK Police, dated 30 January 2003 (see § 91). The Ruling names the Co-Chief of the Subcommittee of Police Cooperation within the Serbian MUP who signed that letter, the witness in this case.
2. The SPRK prosecutor concluded that “[i]t is evident from the criminal report that there is no reasonable suspicion that the suspects committed the indicated criminal offence. In addition, the Prosecutor believes that it is not reasonably likely that further investigation by the police may provide sufficient information. Moreover the file is included in the file 2003-00005.” Therefore, the SPRK Prosecutor decided to dismiss the criminal report and to inform the injured party, “Mr. Petrovic Mico and Petrovic Radmilla [sic.]” about this decision.
3. Further in the file are two Notices of Dismissal of the Criminal Report, also dated 22 July 2009. The first one is addressed to the Head of the EULEX WCIU and the second one to “Mr. Petrovic Mico and his wife Petrovic Radmilla, injured parties in the above references case [sic.]”. Neither document bears stamps or prosecutor’s signatures.
4. *Investigation in relation to all victims (case no. 2003-00005)*
5. According to the CCIU Case Brief Sheet, a joint investigation was conducted into the abduction and disappearance of the complainants’ relatives and the killing of Mrs Dragica Petrićević (the mother-in-law of Ms Rosanda Kabaš), under the case no. 2003-00005. It has very brief description of their abductions; it also names a certain Mr A.H. as a witness.
6. Also in the file is a WCIU Case Analysis Report, dated 5 October 2007, referenced to the case no. 2003-00005. The number of victims reflected there is “11”, number of known witnesses is “3 + 2 reporting parties”, number of witness statements “zero”. This report refers to two identified suspects: F.D., and A.S; the field “Investigator Recommendation/Opinion” reads:

“The case has 10 known witnesses but there are no witness statements to be found in the report material at hand. Three suspects are named but it seems like no investigation has been carried out. I recommend that this case should be OPEN and assigned to an IPO [International Police Officer] as there is good possibility that some of the 10 witnesses has important information in regard to the crimes.”

1. The file further contains a WCIU Case Report in relation to the case no. 2003-00005, generated from the WCIU database on 11 October 2007. The type of crime is entered as “War Crime – Murder”; it mentions Ms Rosanda Kabaš as a “Reporting Party”; the case is marked as “low priority”. The part “Summary” has a number of entries:
* the initial one, dated 24 February 2003, reads:

“It would appear that, as of 12th June 1999, the UCK Paramilitaries in DJAKOVICA placed guards outside the buildings in Milosa Obilica Street, where Serbian families lived, and required them to report to UCK HQ every day.

The suspect, [F.D.], was one of those assigned as a guard, he is also named as one of the abductors.

During a late evening and night, some time later in June 1999, a number of the families were forcibly taken from their homes.

A member of one of the families, Dragica PETRICEVIC[[18]](#footnote-18), was later found dead near Wine Cellar in Djakovica.

The Victim, Mico PETROVIC, owned a brown Mercedes motor vehicle, which had been hidden with an Albanian Friend, [A.H.], this vehicle was forcibly taken from [A.H.], by the suspect, [A.S.], who apparently still drives this vehicle.”

* the next input, dated 8 August 2005, reads:

“[A.S.], aka Zifa, from Djakovica has spent many years in CIPAT band. [S.] is considered from MUP the main suspect of the 12 Romas. 4 of the Romas were executed in the cellar of Hotel Pastriku downtown Djakovica.”

* the following input, dated 28 August 2005, is related to the above-mentioned additional victim, Mrs Dragica Petrićević. It transpires from the text that Ms Rosanda Kabaš was a witness to her abduction. Another person, apparently an eye-witness, is also named.
* the last input, dated 30 August 2005, provides details of the abduction of Mr Milenko Kabaš.
1. The same document contains a list of persons associated with the alleged crime, which includes two reporting parties (one of them being Ms Rosanda Kabaš), three suspects (including F.D. and A.S.), eleven victims (including the relatives of the complainants in this case) and three witnesses (including Ms Rosanda Kabaš).
2. Attached to the above report is a CCIU case report in relation to their investigation no. 2002-00038, related to the above-referred killing of 12 people, where A.S. was also a suspect.
3. Also in the file is an undated intelligence report on the suspect, A.S.; it has two hand-written case numbers on top of it: 2003/00005 and 2002/00038.
4. The file further contains an English translation of an undated criminal report against unknown perpetrators, addressed to the International Prosecutor at the Pejё/Peć DPPO, filed by R.N. in relation to the abduction and disappearance of Mr Nedeljko Šutaković and his family. According to the note at the bottom of this document, it was translated on 28 August 2005. It adds to the above account that Mr Nedeljko Šutaković and his family were abducted by KLA members on the way to their apartment from the Serbian Orthodox Church, on 15 June 1999.
5. The file also contains an English translation of an undated criminal report filed by Ms Rosanda Kabaš in relation to the abduction and disappearance of Mr Milenko Kabaš. The translator’s note at the bottom of this document indicates that the document was created on 15 October 2005. It repeats the above account of his abduction and implicates F.D. in the commission of that crime.
6. The file contains another translated criminal report against unknown perpetrators, addressed to the International Prosecutor in relation to the disappearance and killing of Mrs Dragica Petrićević at the Pejё/Peć DPPO, filed by M.P. on an unknown date. It mentions Ms Rosanda Kabaš, and two other persons as witnesses.
7. Also in the file is a Ruling to Dismiss the Criminal Report, dated 20 July 2009, no. PPS.186/09, by which an International Prosecutor of the SPRK dismissed the police criminal reports in the cases nos 2003-00005, 2003-00006 and 2003-00007. However, these police criminal reports are not in the file; there is neither a stamp nor a prosecutor’s signature on this Ruling.
8. This Ruling provides very brief details of the allegations in the cases nos 2003-00005 (abduction of a number of Serbian families from one building in Gjakovë/Đakovica, one of them, Mrs Dragica Petrićević, was later found dead), 2003-00006 (abduction of Mr and Mrs Petrović by four KLA members) and 2003-00007 (abduction of Mr Milenko Kabaš and Mrs Dragica Petrićević). It further states that in all three cases the suspects are the same. It adds that the above information was “based on the statements of the following witnesses”, but no witnesses are listed. Likewise, the field “suspect” is blank.
9. The Ruling qualifies the alleged crimes as follows:

“- On June 1999, in Djakovica, war crime against civilian population, willful killing in

 violation of article 142 CCSFRY, 120-121 PCCK punishable up to 10 years

 imprisonment[[19]](#footnote-19),

 - On June 1999, in Djakova, Murder in violation of article 30 CLK, 146 PCCK

 punishable up to 5 years imprisonment[[20]](#footnote-20).”

1. The SPRK prosecutor concluded that “[i]it is evident from the criminal report that there is no reasonable suspicion that the suspect committed the indicated criminal offence. In addition, the Prosecutor believes that it is not reasonably likely that further investigation by the police may provide sufficient information. Moreover, this case is included in the case 2002-00038.” Therefore, the criminal reports were dismissed.
2. Also in the file is a Notice of Dismissal of Criminal Report, also dated 20 July 2009, addressed to the Head of the EULEX WCIU; it is not signed.
3. The EULEX WCIU Case Analysis Report, dated 19 September 2011, confirms that the cases nos 2003-00005, 2003-00006 and 2003-00007, which “examine the same incident”, had in fact been dismissed by an SPRK prosecutor on 20 Jul 2009 “because there was no reasonable suspicion against the suspects. Also note that the cases lie outside of the war crimes timeframe.”
4. *The Files received from UN archives in New York*
5. As mentioned above (see § 33), on 17 December 2012, the Panel received the documents related to the investigations into the complaints of Ms Lela Nikolić (nos 73/09 and 74/09 only) and the complaint of Ms Rosanda Kabaš (no. 78/09), which were returned to UNMIK from the UN archives in New York.
6. These files contain the files previously held by the OMPF and the UNMIK Police MPU in relation to the three indicated cases, as described above respectively.
7. **THE COMPLAINTS**
8. The complainants complain about UNMIK’s alleged failure to properly investigate the abduction and disappearance of their close relatives, Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović. 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).
9. The complainants also complain about the mental pain and suffering allegedly caused to them by this situation. In this regard, they rely on Article 3 of the ECHR.
10. **THE LAW**
11. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
12. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
13. In determining whether it considers that there has been a violation of Article 2 (procedural limb) of the ECHR, the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses for the first time the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.

1. The Panel notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, [the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf), the Convention on the Rights of the Child.
2. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
3. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above (see § 99). In the particular case of killings and disappearances in life-threatening circumstances, it is not the Panel’s role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.
4. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights “that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).
	1. **The parties’ submissions**
5. The complainants in substance allege violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of their close relatives. The complainants also state that they were not informed as to whether an investigation was conducted and what the outcome was.
6. The SRSG generally notes that in this case UNMIK has been able to obtain copies of relevant files previously held by the OMPF and UNMIK Police WCIU. The SRSG also submits that, as UNMIK handed over all investigative files to EULEX, it is “dependent on EULEX to provide information on any given matter before the HRAP that involves Police and Justice investigations”.
7. In his comments on the merits of all the complaints under Article 2, the SRSG generally states that the complainants’ relatives disappeared in life threatening circumstances, around the same time, prior to the adoption of the UNSC Resolution No. 1244 (1999) establishing UNMIK. He notes that at that time the security situation in Kosovo was tense and there was a high level of violence all over Kosovo due to the on-going armed conflict. Soon after the establishment of UNMIK in June 1999, the security situation remained tense, as “KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.”
8. The SRSG accepts UNMIK’s responsibility to conduct an investigation in the cases of Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović under Article 2 of the ECHR, procedural part, starting from 11 June 1999. In the words of the SRSG, “the essential purpose of such investigation [was] to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”
9. The SRSG notes that the complainants do not allege a violation of the substantive part of Article 2, but rather of its procedural element. The SRSG states that “the procedural element of Article 2 is essentially two-fold: (i) an obligation to determine through investigation the fate and/or whereabouts of the victim; and (ii) an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the victim.”
10. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

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

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

1. In the view of the SRSG, UNMIK was faced with a very similar situation in Kosovo, from 1999 to 2008, as the one in Bosnia “from 1995 to 2005”. The SRSG states that thousands of people were displaced or went missing during the Kosovo conflict. Many of the persons who went missing were abducted, killed, and buried in unmarked graves inside or outside Kosovo, which made it very difficult locating and recovering their mortal remains.
2. In June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of the operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština.
3. The SRSG continues in this regard that: “Even more serious that the shortfall of the forensic standards was the lack of attention paid to the humanitarian agenda of identifying bodies and restituting their remains […]. In a focused effort to demonstrate that crimes were systematic and widespread, ICTY and its gratis teams autopsied as many bodies as possible with little or no identification work. ICTY reports that it exhumed 4019 bodies in 1999 an 2000, less than half of which were identified; furthermore, some of the unidentified bodies exhumed in 1999 by gratis teams were reburied in locations still unknown to OMPF.” After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “*ex-officio*, without any broader prosecutorial strategy”. As a consequence, a large amount of unstructured information was collected.
4. The SRSG states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is “testament to the vigour of its work between 2002-2008” and that “more bodies continued to be located in burial sites and more identifications and returns to family members are taking place, often based on information contained in UNMIK-OMPF files”. The SRSG continues that “therefore, it is apparent that the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one” in Kosovo as reflected in the *Palić* case referred to above. The SRSG further notes that this process was “reliant on a number of actors rather than just UNMIK, for example the International Commission on Missing Persons, the International Committee of the Red Cross and local missing persons organisations.”
5. The SRSG further argues that fundamental to conducting effective investigations is a professional, well trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task, which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

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

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

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to the crime. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and culture, with limited support from the still developing Kosovo Police. In addition, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch.
2. The SRSG also stresses that “fundamental to locating missing persons and the perpetrators of disappearances and unlawful killings is information” and that in Kosovo “investigators were often faced with situations where individuals who may hold important information or knowledge on the whereabouts and fate of missing often did not want to disclose such information either through interviews with UNMIK Police or by coming forward voluntarily.”
3. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
4. Further, with regard to all cases, the SRSG provides a brief overview of the actions undertaken by UNMIK authorities and the available investigative documents (see §§ 69 - 108 above).
5. In relation to the investigation into the abduction and disappearance of the Šutaković family, the SRSG notes the MPU files for all of them were opened on 1 April 2003 and that “On the basis of the MPU file, UNMIK police continued to pursue an investigation into the whereabouts of the victims and unfortunately however, these investigations did not result in locating any of them or in determining their fate.” The SRSG further accepts that the WCIU had identified three suspects, but does not comment on the lack of further police action in that regard, other than attempts to clarify their identities. The SRSG also accepts that, although “there were ten (10) witnesses that could possibly give evidence in connection with the abductions, […] no witness statements were available on file.”
6. With regard to the Šutaković family’s disappearance, the SRSG concludes that “the lack of any leads regarding the possible perpetrators and the unwillingness of potential witnesses to talk to the Police made the task of identifying the perpetrators and arresting them an impossible one.”
7. In relation to the investigation into the abduction and disappearance of Mr Milenko Kabaš, the SRSG only states that, from the investigative file, it is evident that “all necessary activities were carried out by UNMIK Police with regard to the possible location of the mortal remains of the missing person”. Those actions include the collection of DNA samples and submitting that information to the ICMP. UNMIK Police also initiated the investigation into his disappearance and registered it under no. 2003-00005.
8. The SRSG accepts that the investigative files in relation to Mr Kabaš “disclose information from the complainant indicating the name and possible perpetrator and others who may have witnesses the disappearance. The files then do not provide any information whether UNMIK Police had followed up on certain leads or whether any action was taken. There is also no information why in 2007 the status of the case was indicated as “low priority”. However, according to the SRSG, this might be a result of incomplete investigative files being in UNMIK’s possession.
9. The SRSG assumes that “there was no available information available for UNMIK Police/OMPF, which could have lead to a specific location, and there was no matching information in the ICMP database, on the basis of which Mr. Kabaš could have been identified. For these reasons, no failure with regard to the investigation into the possible location of Mr. Milenko Kabaš can be attributed to UNMIK.”
10. The SRSG provided no specific comments in relation to the investigation into the abduction and disappearance of Mr and Mrs Petrović.
11. Finally, with regard to all complaints, the SRSG concludes that UNMIK authorities acted fully in accordance with the procedural requirements of Article 2 of the ECHR, in relation to all victims in this case.
12. The SRSG also informed the Panel that he might make further comments on this matter, “[a]s there is the possibility that additional and conclusive information exists”, beyond the documents presented to the Panel. However, no further communication in this regard, other than the confirmation of the full disclosure of the investigative files, has been received to date.
	1. **The Panel’s assessment**
13. 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 ECHR, in that UNMIK Police did not conduct an effective investigation into the abduction and disappearance of their relatives, Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović.
14. *Submission of relevant files*
15. At the Panel’s requests, on a number of occasions the SRSG provided copies of the documents related to the investigations subject of the present complaints, which UNMIK was able to recover, including some files which had been retrieved from the archives at the UN Headquarters in New York (see §§ 32 - 33 above). As mentioned above (see § 147), the SRSG also noted that more information, not contained in the presented documents, may exist in relation to this case. However, on 20 November 2014, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 36 above).

1. Furthermore, as mentioned above (§§ 14 and 84), the Panel had also requested EULEX to provide additional information in relation to the complaint of Ms Kabaš case, but EULEX was unable to do so (see § 86 above).
2. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaints. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005, § 56; ECtHR, *Sabanchiyeva and Others v. Russia*, no. 38450/05, judgment of 6 June 2013, § 165).
3. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigation to their handing over, is crucial to the continuation of such investigations and could thus raise *per se* issues under Article 2 (see Human Rights Advisory Panel [HRAP], *Bulatović*, no. 166/09, opinion of 13 November 2014, § 62).
4. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative documents. However, UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
5. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaints on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of 15 March 2011, § 146).
6. *General principles concerning the obligation to conduct an effective investigation under Article 2*
7. The Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights *Velásquez-Rodríguez* (see Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The positive obligation has also been stated by the HRC as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Article 2(3) (right to an effective remedy) of the ICCPR(see HRC, General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.
8. In order to address the complainants’ allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
9. 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 § 124 above, at § 136; ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
10. 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 in § 157 above, § 321).
11. Setting out the standards of an effective investigation, the Court has stated that besides being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC]*, Varnava and Others v. Turkey*, cited in § 124 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312; and *Isayeva v. Russia*, cited above, at § 212).
12. In particular, the investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the investigation’s ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 156 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). 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 § 157 above, at § 322).
13. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECHR 2002‑II; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 157 above, at § 323).
14. Specifically with regard to persons disappeared and later found dead, which is not the situation in this case, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that “the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 159 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 above, at § 148, *Aslakhanova and Others v. Russia*, nos 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation “does not come to an end even on discovery of the body .... This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 above, at § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 159 above, at § 64).
15. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Ahmet Özkan and Others*, cited in § 158 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 158 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 157 above, at § 324).
16. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri,* cited in § 160 above, at § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5;see also HRC,  *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives, UN Document A/HRC/22/52, 1 March 2013, § 23-26).
17. *Applicability of Article 2 to the Kosovo context*
18. The Panel is conscious of the fact that the abduction and disappearance of Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović took place immediately after the deployment of UNMIK in Kosovo, soon at the end of armed conflict, when crime, violence and insecurity were rife.
19. Nevertheless, 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.
20. The Panel considers that the SRSG’s arguments raise two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, secondly, whether such standards shall be considered fully applicable to UNMIK.
21. 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).
22. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court on Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 159 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 § 163 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 § 158 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 158 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39 – 51; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 157 above, at § 319).
23. The Court has acknowledged that “where the death [and disappearances] to be investigated under Article 2 occur in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at § 164; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 156 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, at §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited in § 158 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
24. 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 § 155 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
25. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 45 above).
26. 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 § 159 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
27. However, the Panel considers that, in the context of most serious crimes committed against civilian populations, Article 2 requires that the authorities take all investigative efforts in order to establish the facts and bring perpetrators to justice. Such cases shall be given the highest priority.
28. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel therefore determines that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
29. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel’s jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight; failure to provide family members with minimum necessary information on the status of the investigation  (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 162 above, at § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover between the investigators and/or investigative units. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK’s failures, which persisted throughout the period of the Panel’s jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.
30. *Compliance with Article 2 in the present case*
31. Turning to the circumstances of the present case, the Panel notes that UNMIK certainly became aware of the abduction and disappearance of the Šutaković family by September 2002 (see §§ 69 and 70 above), of Mr Milenko Kabaš by March 2001 (see § 75 above) and of Mr and Mrs Petrović by May 2000 (see § 89 above). For his part, the SRSG does not dispute that UNMIK was obliged to investigate their disappearances.
32. The Panel would also make clear that the investigative documents in its possession suggest that the missing relatives of the complainants have been abducted by the same group of KLA members at around the same time and from the same location. Likewise, it is clear that at least by the end of 2003, UNMIK Police WCIU had joined all these cases into one investigation (see § 100 above). Thus, except for the initial periods when the cases were investigated separately, the Panel will assess the investigation into the abduction and disappearance of all of the victims in this case as a single process.
33. The purpose of these investigations was to discover the truth about the events leading to the abduction and disappearance of the complainants’ relatives, to establish their fate and to identify the perpetrators. To fulfil these purposes, those conducting the investigations were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
34. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim’s family. The investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation’s effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 159 - 163 above).
35. The Panel notes that according to the 2000 Annual Report of UNMIK Police, by June 2000 it assumed “the complete executive policing powers” in Pejё/Peć region. According to the statistical data, by 31 August 2000, UNMIK Police had 3,980 officers deployed throughout Kosovo, while by the end of September 2000 this number became 4,145[[21]](#footnote-21). Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
36. Having noted the SRSG’s assertion that the file submitted to the Panel may be incomplete, and the lack of further explanation in relation to this (see § 147 and 153 above), the Panel assumes that UNMIK cannot guarantee whether the file presented to the Panel is complete or not. In case it is not complete, it would indicate that one of the following situations may have occurred: no proper investigation was carried out; the file was not accurately and fully handed over to EULEX; or UNMIK failed to retrieve the complete file from the current custodian.
37. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the complete investigative file for its review (see § 153 above). However, the Panel considers that whichever of these potential explanations is applicable, it would indicate a failure directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.
38. In the same context, the Panel would like to express its concern about the fact that the KFOR in the region “West” does not have their own record of the abductions, which took place under their watch, in June 1999 and were apparently reported to them (see §§ 58 and 102).
39. The Panel notes especially two above mentioned important facts related to this particular case: the response from EULEX to the Panel’s request for information (see §§ 84 - 86) and the return of some case-related material, from the archives at the UN Headquarters (see §§ 32 - 33 and 115 - 116). In the first, EULEX informed the Panel that in July 2009 a number of cases not officially handed over from UNMIK to EULEX for various reasons were “found” in the former UNMIK DOJ building. In turn, the documents returned from the UN Headquarters’ archive, although being the same copies as the ones returned to UNMIK by EULEX, are related to only three out of eight missing persons’ cases. In the Panel’s view, these facts are particularly indicative of a possible general failure to comply with the obligation to ensure the proper handover of the investigative material so that the material could be traced and subsequently retrieved.
40. As far as the conduct of all these investigations is concerned, the Panel notes that there were obvious shortcomings from their inception, having in mind that the initial stage of the investigation is of the utmost importance. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 124 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 159 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see § 47 above).
41. With regard to the first part of the procedural obligation, that is locating the mortal remains of the complainants’ relatives, the Panel notes that their whereabouts remain unknown. The relevant ICMP database entries show that sufficient DNA samples had been collected only for Mr Nedeljko Sutaković (see § 53 above), Mr Mića Petrović and Mrs Radmila Petrović (see § 66 above). The ante-mortem details for complainants’ missing relatives had been gathered by the ICRC.
42. In this respect, the Panel recalls that the collection of the DNA samples is of itself an essential action that secures the necessary material for any future comparative examination and possible identification of located mortal remains. However, in the cases of Mr Nedeljko Sutaković and Mr and Mrs Petrović, no such identification has yet occurred. Moreover, in the cases of Mrs Darinka Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković and Mr Milenko Kabaš such samples have still not been collected, fifteen years after they were abducted.
43. The Panel notes in this respect a clarification provided on 19 November 2014 by the EULEX Department of Forensic Medicine, in relation to the lack DNA samples for the three missing sons of Mr Nedeljko Šutaković and Mrs Darinka Šutaković. According to their expert, the only source of DNA samples for the children are their parents. In this particular case, it is a DNA sample of Mr Nedeljko Šutaković that must be collected to enable the DNA identification of his three sons. Thus, until he (or his mortal remains) is found and identified, no necessary DNA samples can be collected for Mr Radovan Šutaković, Mr Ðorđe Šutaković or Mr Aleksandar Šutaković. This adds to the gravity of the disappearance of children with their parents.
44. However, no explanation as to why until now the necessary DNA samples have not been collected for Mrs Darinka Šutaković and Mr Milenko Kabaš was provided to the Panel. In this respect, the Panel recalls the SRSG’s concern regarding the lack of a unified approach to the identification of the mortal remains in the early years of UNMIK’s presence in Kosovo, and that some mortal remains “were reburied in locations still unknown to OMPF” (see §§ 132 - 133 above). However, in the Panel’s view, this cannot justify the inaction of UNMIK authorities in this respect at later stages.
45. It is widely accepted that the only way to have a certain identification of mortal remains after such a long period of time would be through comparison of samples of DNA material. Thus, the collection of sufficient samples from the next-of-kin of a missing person becomes imperative and, without this, the chances to establish the identity of mortal remains, if found, are very slim.
46. Therefore, since the ongoing failure to collect such samples seriously undermines the possibility of identifying the mortal remains of Mrs Darinka Šutaković and Mr Milenko Kabaš (in case they have been or will be found), the Panel considers that the first part of the procedural obligation under Article 2 of the ECHR with respect to them is not satisfied (compare with the Panel’s approach in the case *Buljević*, no. 146/09, opinion of 13 October 2013, §§ 93 - 95).
47. The Panel will now turn to the investigation carried out by UNMIK Police with the aim of identification of perpetrators and bringing them to justice, that is the second element of the procedural obligation under Article 2 of the ECHR.
48. In this respect, the Panel notes that, as established above, UNMIK became aware of the disappearance of the Šutaković family by September 2002, of Mr Milenko Kabaš by March 2001 and of Mr and Mrs Petrović by May 2000 (see § 177 above); then the respective investigative files were opened by UNMIK Police. However, no immediate action by UNMIK Police whatsoever, except for registering the cases, is reflected in the investigative file.
49. Furthermore, before any substantive investigative action was undertaken, their files had been categorised as “pending” or “inactive” (see §§ 72, 83 and 94 above), although the likelihood of a grave crime against a large group of Kosovo Serbs, including underage children, having been committed was very high, and the names of the suspects were made available to the police. Thus, in the Panel’s view, the investigation into the abduction and disappearance of the complainants’ relatives obviously did not fulfill the requirements of promptness and expeditiousness.
50. Assessing this investigation against the need to take reasonable investigative steps and to follow obvious lines of enquiry to obtain evidence, the Panel takes into account that a properly maintained investigative file should have included records of all investigative actions and particularly of the interviews with the complainant, suspects and all potential witnesses to the disappearance. In all cases, such interviews should take place as soon as possible and should be recorded and retained in the case file (see *United Nations Manual On The Effective Prevention And Investigation Of Extra-Legal, Arbitrary And Summary Executions*, adopted on 24 May 1989 by the Economic and Social Council, Resolution 1989/65).
51. However, UNMIK Police never properly recorded statements of any of the complainants, or their family members. This is especially important in the view of the fact that all complainants possessed information in relation to the possible suspects and witnesses, including eye-witnesses and that the second complainant, Ms Rosanda Kabaš, was herself an eye-witness to the abduction of her brother (see e.g. §§ 57 and 64 above). Likewise, there is no registered action with regard to the identified suspects and additional witnesses.
52. It is particularly important in the light of the fact that the complainants’ contact details, in Serbia proper, except for those of Ms Lela Nikolić, were available to UNMIK Police from the very beginning. In this respect, the Panel recalls the general need to take into account the special vulnerability of displaced persons in post-conflict situations (see § 172 above). Thus, in the Panel’s view, it was for UNMIK to reach out to them, and not for them to come back to Kosovo, from where they had left for security reasons, to try to find out what had happened to their relatives or to the investigation (see HRAP, *Buljević*, cited in § 192 above, at § 100).
53. The Panel likewise recalls the SRSG’s above arguments that information is the most crucial element to locating missing persons and the perpetrators of disappearances and unlawful killings and that in many situations in Kosovo the witnesses did not provide the necessary information (see § 137). Therefore, “the lack of any leads regarding the possible perpetrators and the unwillingness of potential witnesses to talk to the Police made the task of identifying the perpetrators and arresting them an impossible one (see § 141).
54. In this regard, the Panel notes, first, that information is crucial to any investigation, regardless of a crime being investigated. Second, almost any investigation at its initial stage lacks at least some information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. In this case, however, it appears that, instead of actively searching for information and leads, UNMIK Police simply waited for further information to appear by itself. In this situation it may have led to the loss of potential evidence (see e.g. HRAP, *P.S*., no. 48/09, opinion of 31 October 2013, § 107).
55. In relation to the witnesses’ unwillingness to talk to the police, the Panel notes that, first, the security of the witnesses should be considered a matter of great importance. Furthermore, the witness statements should normally be recorded as soon as possible after an incident, and the witness statements are not the only source of evidentiary material. In this case, a witness, D.G., refused to meet with the police in relation to the investigation into the abduction of Šutaković family. However, the contact had taken place in December 2004, almost five years after the event. Thus, the frustration of the witness, who was asked basic question about her relatives’ abduction such a long time after the event, is understandable. On the other hand, she did not live in Gjakovё/Đakovica, she was not the only witness in the case and was not an eye witness. However, no other, witnesses, who probably possessed more valuable information, were interviewed.
56. The Panel previously noted, in relation to another case, a frequently reported problem related to the lack of protection of witnesses in Kosovo from threats or intimidation, which “has been, and remains, one of the greatest challenges for justice authorities”[[22]](#footnote-22). Some observers note that the “[w]itnesses, who in many cases are crucial to linking defendants to the crimes for which they are accused, are becoming more reluctant to testify before institutions, be it police, prosecutors and/or judges in courts”[[23]](#footnote-23) (see HRAP, *Mladenović*, no. 99/09, opinion of 26 June 2014, § 200). The Panel however also noted that in this particular case, the reasons for the refusal to meet the police are not known.
57. The Panel also reiterates in this regard its position expressed in many other cases about the adequacy of the investigation into the abductions, disappearances, killings and suspicious deaths in relation to the categorisation of cases into “active” and “inactive”. In those cases the Panel underlined that any “categorisation of an investigation should take place only after the minimum possible investigative actions have been undertaken and obtainable information has been collected and analysed” (see e.g. HRAP, *B.A*., no. 52/09, opinion of 14 February 2013, § 82). The Panel cannot accept that the crimes of such a scale as those in the present case could be considered as a “low priority”. In addition, the Panel fears that such inaction indicates certain reluctance on the part of UNMIK Police to pursue the investigations when there were indications of ethnically motivated violence pointing towards persons associated with the KLA (see HRAP, *Janković*, no. 249/09, opinion of 16 October 2014, § 108).
58. The Panel is conscious of the fact that not all crimes can be solved and not all investigations can lead to identification and prosecution of the perpetrator[s]. The Panel has already referred above to the position of the European Court with regard to the nature of the procedural obligation under Article 2, which is “not an obligation of results but of means.” The Court clearly states that no violation of Article 2 exists if the authorities take all reasonable steps they can to secure the evidence concerning an incident and the investigation’s conclusion is based on thorough, objective and impartial analysis of all relevant elements (see § 159 - 160 above), even when no perpetrators are convicted (see e.g. ECtHR case *Palić*, cited in § 159 above, at § 65 or ECtHR [GC], *Giuliani and Gaggio v. Italy*, no 23458/02, judgment of 24 March 2011, §§ 301 and 326). In this respect, the Panel also recalls the position of the European Court that “the authorities 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 § 160 above).
59. However, in this case, before any minimum substantive action was undertaken and any information collected, the investigations were de-facto suspended, pending new information to appear, and subsequently stayed without any action for the years to come.
60. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that, after that critical date, the failure to conduct the necessary investigative actions, including those at the initial stage, persisted. Accordingly, inadequacies existing up until that date were not addressed neither corrected. In accordance with the continuing obligation to investigate, the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
61. As already noted, from the suspension of this investigation in 2004 and 2005, except for adding some information from the criminal reports to International Prosecutors to the database, in 2005 (see § 102 above), and a review by WCIU in 2007 (see § 101 above), no action was taken on this case within the period of the Panel’s temporal jurisdiction.
62. As the fate of any of the complainants’ family members had not been established, UNMIK Police was obliged to use the means at their disposal to regularly review the progress of the investigation in order to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform their relatives regarding the progress of this investigation. As mentioned above, the separate MPU investigations had been reviewed once each: the case of Šutaković in December 2004 (see §§ 71 - 72), the case of Kabaš in April 2005 (see §§ 82 - 83) and the case of Petrović in April 2004 (§§ 93 - 94). Thereafter all of them had been *de-facto* closed, as no further substantive action was taken on any of them.
63. The Panel is seriously concerned by the fact that these case reviews were undertaken over an extremely short period of time (one or a few days), and appear as mere formality, rather than substantive review.
64. In the same sense, the Panel also recalls that the investigative file in relation to the joint investigation into the disappearance of all 8 victims in this case was reviewed by the UNMIK Police WCIU only once, in October 2007. In the review report, the WCIU investigator noted that there was information on 10 witnesses and three suspects, none of whom had been located and interviewed. Although he recommended to actively investigate the case, no action was taken (see § 101 above).
65. Likewise, the file indicates no involvement of a public prosecutor in this investigation, although three separate criminal reports related to the same event, including one by Ms Rosanda Kabaš, were received by International Prosecutors (see §§ 106 - 108 above). As the Panel has concluded previously, a proper prosecutorial review of the investigative file might have resulted in additional recommendations, so that the case would not have remained inactive for years to come (see HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 160). Thus, in the Panel’s view, in the present cases, the review of the investigative files was far from being adequate.
66. The Panel considers it necessary to express its concern about the quality of the case review which was undertaken by the SPRK in 2009, leading to a closure of the case. Although this procedural act lies outside the Panel’s jurisdiction, it seems to have continued the sequence of mistakes and inadequacies in this case.
67. In particular, the investigation into the abduction of Mr and Mrs Petrović was closed by a Ruling of an SPRK International Prosecutor dated 22 July 2009 (see §§ 95 - 99 above), while the case in relation to all victims on 20 July 2009 (see §§ 109 - 113 above). Both of them fail to acknowledge the shortcomings of the previous investigation by UNMIK, which were identified and put on record two years before (see § 208 above); both misrepresent the facts available in the files and even the applicable legal provisions (see §§ 96 and 111).
68. Furthermore, the Panel is perplexed by the simplistic manner in which the prosecutor, without undertaking any action, concluded that it was “evident from the criminal report that there is no reasonable suspicion that the suspects committed the indicated criminal offence” and that it was “not reasonably likely that further investigation by the police may provide sufficient information.” The fact that the International Prosecutor decided to notify the missing Mr Mića Petrović and Mrs Radmila Petrović about the dismissal of the investigation, the primary aim of which was to find what happened to them (see §§ 98 - 99 above) indicates that the Prosecutor did not even study the file.
69. The Panel would also like to express its position with regard to the SRSG’s assertion that UNMIK Police fulfilled its obligations to open and pursue this investigation into the abduction and disappearance of the complainants’ relatives (see §§ 140, 141, 142 and 146 above). In view of all above-described deficiencies and failures in the investigation, the Panel is concerned by this conclusion. As explained above, the file does not reflect any substantive action by UNMIK authorities; thus it is not clear which and how those obligations had been complied with.
70. The apparent lack of any reaction from UNMIK Police, either immediately or at later stages,may have suggested to perpetrators that the authorities were either not able, or not willing to conduct investigations into disappearances of people. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently. Certainly, in the Panel’s view, such inaction did not help UNMIK to defuse the “[t]empers and tensions … running high amongst all ethnic groups, exacerbated by reports of missing and dead persons”, mentioned by the SRSG (see § 135 above).
71. The Panel recalls that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. The criteria is that the investigation must be undertaken in a complete and serious manner and not be a mere formality. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards identifying the perpetrators and bringing them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 159 above), as required by Article 2 of the ECHR.
72. For its part, the Panel, in light of the shortcomings and deficiencies in the investigation described above, considers that this case, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo (see § 176 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russi*a*n Federation*, cited in § 171 above, at § 11.4; see also HRAP, *Bulatović*, no. 166/09, opinion of 13 November 2014, §§ 85 and 101).
73. In relation to the procedural requirement of public scrutiny, the Panel recalls that Article 2 also entails that the victim’s next-of-kin be involved in the investigation to the extent necessary to safeguard his or her legitimate interests. In this matter, the second and third complainants were apparently contacted in relation to their missing relatives once, when the ICRC collected the ante-mortem data, but it was not the case for the first complainant who was never contacted. The Panel notes that the investigative file has an indication of one, although not properly recorded, contact with D.G., a relative of Mr Nedeljko Šutaković initiated by UNMIK Police apparently in December 2004, but she refused to meet them (see § 72 above). On another occasion, relatives of Mr and Mrs Petrović apparently approached the UNMIK Police liaison officer in Belgrade, in search for information about them (see § 93 above). Thus, the Panel considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR.
74. Therefore, considering all stated above, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and disappearance of Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.

1. **Alleged violation of Article 3 of the ECHR**
2. The Panel considers that the complainants invoke, in substance, a violation of their right to be free from inhumane or degrading treatment arising out of the abduction and disappearance of their relatives, as guaranteed by Article 3 of the ECHR.
3. **The scope of the Panel’s review**
4. 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 §§ 120 - 124 above).
5. 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 § 170 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 159 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).
6. Lastly, where mental suffering caused by the authorities’ reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, §§ 147 - 148).
7. **The Parties’ submissions**
8. The complainants allege that the lack of information and certainty surrounding the abduction and disappearance of Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović, particularly because of UNMIK’s failure to properly investigate their disappearance, caused mental suffering to them and their families.
9. Commenting on all the complaints in this part, the SRSG rejects the allegations. He stresses that, while the complainants imply that they had suffered mental pain and anguish, there is no express allegation that this mental pain and anguish was a result of UNMIK’s response to the disappearance of their relatives. In particular, the complainants had made no assertions of any bad faith on the part of UNMIK personnel involved with the matter, while there is no evidence of any disregard for the seriousness of the matter or the emotions of the complainants and their families emanating from the disappearances.
10. In addition, commenting on the attempts of the first applicant, Mrs Lela Nikolić, to obtain information about her abducted close family members, the SRSG states that the file does not show that “UNMIK Police were in possession of the complainant’s contact details and that they would have been able to contact her in connection with the investigations.” However, the efforts were made to contact the next of kin whose contact details were available and they were unwilling to cooperate with the investigations.
11. With regard to the complaint of the second complainant, Mrs Rosanda Kabaš, the SRSG adds “It is not clear from the information the complainant has provided to what extent she had addressed the authorities for information about the disappearance of her brother.”
12. On the complaint of the third complainant, Mr Milan Petrović, the SRSG stresses that he “did not witness the disappearance, neither was he in close proximity to the location at the time it occurred.”
13. The SRSG recalls in this respect the position of the European Court that suffering of the family member must have a character “distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation” (see § 236 below). According to the SRSG, the understandable and apparent mental anguish and suffering of the complainants, based on the disappearance of their close relatives, cannot be attributed to UNMIK, but rather a result of the inherent suffering caused by the disappearance of a close family member.
14. Therefore, according to the SRSG, there is no violation of Article 3 of the ECHR and thus these allegations should be rejected by the Panel.
15. **The Panel’s assessment**
16. *General principles concerning the obligation under Article 3*
17. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
18. Setting out the general principles applicable to situations where violations of the obligation under Article 3 of the ECHR are alleged, the Panel notes that the phenomenon of disappearance constitutes a complex form of human rights violation that must be understood and confronted in an integral fashion (see IACtHR, *Velásquez-Rodríguez v. Honduras*, cited in § 155 above, at § 150).
19. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died.
20. The HRC has also recognised disappearances as a serious violation of human rights. In its decision of 21 July 1983, in the case *Quinteros v. Urugay*, it stated that disappearances constitute serious violations of the rights of the disappeared person’s relatives, who suffer from deep anguish which persists for as long as the uncertainty concerning the fate of their loved one continues, often for many years (see HRC, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990), § 14). Moreover, in its decision of 15 July 1994 in the case *Mojica v. Dominican Republic*, the HRC has deemed that “the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 [of the Covenant]”, also prohibiting torture, inhumane or degrading treatment and punishment (see HRC, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).
21. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (see ECtHR, *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Er and Others v. Turkey*, cited in § 223 above, at § 94).
22. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey,* cited above, § 96; ECtHR, *Osmanoğlu v. Turkey,* no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine,* no. 28005/08, judgment of 14 March 2013, § 201).
23. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya,*Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v Algeria,* views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007) (*Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the case *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (…), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have lead to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 171 above, at § 11.7).
24. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts; on the contrary, in the Court’s view, an assessment of the way in which the authorities of the respondent State reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v.Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
25. In this respect, it is the position of the European Court that findings under the procedural limb of Article 2 would also be of direct relevance in considering the existence of a violation of Article 3 (see ECtHR, *Basayeva and Others v. Russia*, cited in § 236 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 224 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 170 above, at § 140).
26. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117 - 118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107 - 110). In contrast, in the case under the Panel’s consideration, in no way is UNMIK implicated in the actual abductions and disappearances and it cannot be held responsible for the complainants’ mental distress caused by these tragic events.
27. The Panel is mindful that in the absence of a finding of State responsibility for the disappearance, the European Court has ruled that it is not persuaded that the authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity, which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among others, ECtHR, *Tovsultanova v. Russia*, no. 26974/06, judgment of 17 June 2010, § 104; ECtHR, *Shafiyeva v. Russia*, no. 49379/09, judgment of 3 May 2012, § 103).
28. *Applicability of Article 3 to the Kosovo context*
29. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 165 - 176 above).
30. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 45 above).
31. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaint before it, considering the particular circumstances of the case.
32. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.
33. *Compliance with Article 3 in the present case*
34. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 3 of the ECHR.
35. The Panel notes the proximity of the family ties between the complainants and their missing relatives which is not contested by the SRSG. Indeed, Mrs Darinka Šutaković is the stepmother, Mr Nedeljko Šutaković is the father, while Radovan, Ðorđe and Aleksandar Šutaković are juvenile brothers of the first complainant, Ms Lela Nikolić. The second complainant, Ms Rosanda Kabaš is a sister of Mr Milenko Kabaš. The third complainant, Mr Milan Petrović, is the son of Mr Mića Petrović and Mrs Radmila Petrović.
36. The Panel recalls the failure established above in relation to the procedural obligation under Article 2, despite the fact that UNMIK Police had the necessary information to pursue investigation from the outset and at later stages. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety.
37. As was shown above with regard to Article 2, no proper investigation was conducted in this case. The file records only one contact between one of the complainants and UNMIK authorities and another one with one of the relatives, but no statement was ever taken from any of the complainants, any family member or witness (see § 219 above). Until now, about 14 years after abduction and disappearance of their relatives, the complainants have received no information on their fate or on the status of the investigation.
38. With regard to the SRSG’s comments as to the probable lack of efforts by the complainants to inquire with the investigative authorities regarding the fate of their relatives (see §§ 227 - 228 above), Panel reiterates its above expressed position that it was for the UNMIK authorities to reach out to them, and not *vice versa* (see § 198 above).
39. In view of the above, the Panel concludes that the complainants have suffered severe distress and anguish for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with the cases and as a result of their inability to find out what happened to their close family members. In this respect, it is obvious that, in any situation, their pain that was being caused to them, as they had live in uncertainty about the fate of their relatives, must be unbearable.
40. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the complainants’ distress and mental suffering in violation of Article 3 of the ECHR.
41. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
42. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
43. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate the abduction and disappearance of Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović, and that its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
44. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s mission, made compliance with UNMIK’s human rights obligations difficult to achieve.
45. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 47 above), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violations committed, as required by established principles of international human rights law.
46. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

**-** in line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, cited in § 232 above, at § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the cases at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and disappearance of Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović will be established and that the possible perpetrators will be brought to justice. The complainants and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;

**-** publicly acknowledges, including through media, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the abduction and disappearance of Mrs Darinka Šutaković, Mr Nedeljko Šutaković, Mr Radovan Šutaković, Mr Ðorđe Šutaković, Mr Aleksandar Šutaković, Mr Milenko Kabaš, Mr Mića Petrović and Mrs Radmila Petrović, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainants and their families in this regard;

**-** takes appropriate steps towards payment of adequate compensation to the complainants for the moral damage suffered due to UNMIK’s failure to conduct an effective investigation, as well as for the distress and mental suffering incurred by them as a consequence of UNMIK’s behaviour.

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

**-** In line with the UN General Assembly Resolution on “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (A/Res/60/147, 21 March 2006), takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme, including restitution compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict;

**-** Takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring.

**FOR THESE REASONS,**

The Panel, unanimously,

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

Andrey Antonov Marek Nowicki

Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU -** Central Criminal Investigation Unit

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

**CCR -** Case Continuation Report

**DOJ -** Department of Justice

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

**ECHR** **-** European Convention on Human Rights

**ECtHR -** European Court of Human Rights

**EU** **-** European Union

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

**FRY -** Federal Republic of Yugoslavia

**HLC** - Humanitarian Law Center

**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

**IP** **-** International Prosecutor

**IPO** - International Police Officer

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

**KLA** **-** Kosovo Liberation Army

**SPRK** – Kosovo’s Special Prosecution Office

**MPU -** Missing Persons Unit

**MUP** – Ministry of Internal Affairs (Serb.: *Министарство унутрашних послова*)

**NATO** **-** North Atlantic Treaty Organization

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

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

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

**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

**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; Humanitarian Law Centre, *“Abductions and Disappearances of non-Albanians in Kosovo”* (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos 71412/01 and78166/01, decision of 2 May 2007; International Commission on Missing Persons, *“The Situation in Kosovo: a Stock Taking”* (2010); data issued by the United Nations High Commissioner for Refugees, (available at [www.unhchr.org](http://www.unhchr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>). [↑](#footnote-ref-2)
3. The OMPF database is an electronic source not open to public. The Panel accessed it with regard to this case on 12 December 2014. [↑](#footnote-ref-3)
4. The ICRC database is an electronic source available at: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 12 December 2014). [↑](#footnote-ref-4)
5. The ICMP database is an electronic source available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 12 December 2014). [↑](#footnote-ref-5)
6. His name in ICMP, ICRC and OMPF databases is spelled as “Radoman”. [↑](#footnote-ref-6)
7. Derogatory for “Serb” (Albanian). [↑](#footnote-ref-7)
8. *Abductions and Disappearances of Non-Albanians in Kosovo. 24 March 1999 – 31 December 2000*, p. 12 // HLC webpage [electronic source] - http://www.hlc-rdc.org/wp-content/uploads/2013/02/KO-Abductions-and-disappearances-of-non-Albanians-in-Kosovo-1.pdf (accessed on 12 December 2014). [↑](#footnote-ref-8)
9. Accessed on 12 December 2014. [↑](#footnote-ref-9)
10. Accessed on 13 December 2014. [↑](#footnote-ref-10)
11. Accessed on 12 December 2014. [↑](#footnote-ref-11)
12. His name is spelled as “Mico” in the electronic databases. [↑](#footnote-ref-12)
13. Accessed on 12 December 2014. [↑](#footnote-ref-13)
14. Accessed on 12 December 2014. [↑](#footnote-ref-14)
15. Accessed on 12 December 2014. [↑](#footnote-ref-15)
16. The referred Article 142 of the Yugoslav Criminal Code (CCSFRY) established the death penalty for such crimes, which was at the time of the offence replaced by a long-term imprisonment up to 40 years. In turn, Articles 120-121 of the Provisional Criminal Code of Kosovo (PCCK) establishes a penalty of “at least five years, or a long-term imprisonment”. [↑](#footnote-ref-16)
17. Probably stands for the Criminal Law of Serbia. [↑](#footnote-ref-17)
18. A request for information on Mrs Dragica Petricević’s case was also sent to KFOR “West” by UNMIK Police. However, KFOR responded that, similarly to the matter of Mr Milenko Kabaš (see § 58 above), they only have information from the HLC. [↑](#footnote-ref-18)
19. The referred Article 142 of the CCSFRY established the death penalty for such crimes, which was at the time of the offence replaced by a long-term imprisonment up to 40 years. In turn, Articles 120-121 of the Provisional Criminal Code of Kosovo PCCK establishes a penalty of “at least five years, or a long-term imprisonment”. [↑](#footnote-ref-19)
20. Article 30 of the Criminal Law of Kosovo (CLK), as well as Article 146 of the PCCK clearly establish the penalty of “at least five years” of imprisonment. [↑](#footnote-ref-20)
21. See.: Monthly Summaries of Military and CIVPOL personnel deployed in current United Nations Operations as of 31/08/00 and 30/09/00 // Available on UN official website [electronic source] - http://www.un.org/en/peacekeeping/resources/statistics/contributors\_archive.shtml (accessed on 15 October 2014). [↑](#footnote-ref-21)
22. See: *Witness Security and Protection in Kosovo: Assessment and Recommendations,* a report by the OSCE Mission in Kosovo and the US State Department, November 2007, p. 5 // EULEX official website [electronic source]: http://www.osce.org/kosovo/28552 (accessed on 14 December 2014). [↑](#footnote-ref-22)
23. See: Kosovo *War Crimes Trials: An Assessment Ten Years On 1999 – 2009*, a report by the OSCE Mission in Kosovo, May 2010, p. 5 // OSCE official website [electronic source]: http://www.osce.org/kosovo/68569 (accessed on 14 December 2014). [↑](#footnote-ref-23)