



The Human Rights Advisory Panel

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OPINION

Date of adoption: 14 February 2014

Case Nos. 105/09 & 106/09

Danica STANOJKOVIĆ and Milosav STOJKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, on 14 February 2014,
with the following members taking part:

Marek Nowicki, Presiding Member
Christine Chinkin
Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

I. PROCEEDINGS BEFORE THE PANEL

1. The complaints of Mrs Danica Stanojković (case no. 105/09) and of Mr Milosav Stojković (case no. 106/09) were introduced on 22 April 2009 and registered on 30 April 2009.

2. On 30 September 2009, the Panel communicated the cases to the Special Representative of the Secretary-General (SRSG)¹ for UNMIK's comments on the admissibility of the complaints.
3. On 24 October 2009, the Panel decided to join the cases pursuant to Rule 20 of the Panel's Rules of Procedure.
4. On 18 December 2009, the Panel requested from the European Union Rule of Law Mission in Kosovo (EULEX) information with regard to 43 complaints in relation to missing persons filed before the Panel, including the complaints of Mrs Danica Stanojković and Mr Milosav Stojković.
5. On 2 February 2010, the SRSG provided UNMIK's comments on the admissibility of the complaints.
6. On 23 March 2010, EULEX provided a response to the Panel's request of 18 December 2009.
7. On 28 July 2010, the Panel forwarded UNMIK's comments to the complainants and invited them to submit observations if they so wished. No response was received.
8. On 12 September 2011, the Panel obtained additional information from the first complainant.
9. On 15 September 2011, the Panel declared the complaints admissible. On 19 September 2011, the Panel communicated the decision on admissibility to the SRSG, inviting UNMIK's observations on the merits of the cases, together with the investigative files.
10. On 14 October 2011, the SRSG provided UNMIK's response.
11. On 18 December 2013, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the cases could be considered final. On 23 December 2013, UNMIK provided its response.

II. THE FACTS

A. General background²

¹A list of abbreviations and acronyms contained in the text can be found in the attached Annex.

² The references drawn upon by the Panel in setting out this general background include: OSCE, "As Seen, as Told", Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, "Abductions and Disappearances of non-Albanians in Kosovo" (2001); Humanitarian Law Centre, "Kosovo Memory Book" (<http://www.kosovomemorybook.org>); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, nos. 71412/01 and 78166/01, decision of 2 May 2007; International Commission on Missing Persons, "The Situation in Kosovo: a Stock Taking" (2010); data issued by the United Nations High Commissioner for Refugees, (available at www.unhcr.org) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>).

12. 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).
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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.
19. 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.
20. 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”.
21. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a 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.
22. 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.

23. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.

B. Circumstances surrounding the abduction and disappearance of Mr Milan Stojković and Mrs Darinka Stojković

24. The first complainant, Mrs Danica Stanojković, is the daughter of Mr and Mrs Stojković. The second complainant, Mr Milosav Stojković, is their son.
25. The complainants state that their parents were abducted on an unspecified day in October 1999 from their family house in Ferizaj/Uroševac. They state that, according to unnamed neighbours, their parents were abducted late at night by an armed group of KLA members and taken in an unknown direction. Their whereabouts are still unknown.
26. The complainants state that they reported the abduction to KFOR, the Yugoslav Red Cross, the ICRC, UNMIK, and the Municipality of Ferizaj/Uroševac. The second complainant, Mr Milosav Stojković, states that, on an unspecified date, he filed a criminal complaint with the District Public Prosecutor Office in Prishtinë/Priština in relation to the abduction. They state that, however, they did not receive “any response or decision” from the authorities.
27. An ICRC tracing request on Mr Milan Stojković and Mrs Darinka Stojković remains open. Likewise, their name appears in two lists of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2001 and 11 February 2002 respectively, for which ante-mortem data had been collected. Mr and Mrs Stojković’s names are also included in the databases compiled by the UNMIK OMPF and by the ICMP; the entries concerning Mr Milan Stojković and Mrs Darinka Stojković in the ICMP online database³, read in relevant fields “Sufficient Reference Samples Collected” and “DNA match not found”.

C. The investigation

28. In the present case, the Panel received from UNMIK investigative documents previously held by the UNMIK Police (MPU, War Crime Investigation Unit). The Panel notes that UNMIK has confirmed that all available documents have been provided.

³ The ICMP database is available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en (accessed on 5 February 2014).

29. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel's review under a pledge of confidentiality. In this regard, the Panel must clarify that, although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.
30. It appears from the investigative file that a missing persons file concerning Mrs Darinka Stojković was opened by the UNMIK MPU at some time in 2000 (under case no. 2000-000312), whereas a file on Mr Milan Stojković was only opened in 2001 (under case no. 2001-000305).
31. The investigative file contains an OSCE "Human Rights Interview/Incident Form" specifically concerning the disappearance of Mrs Darinka Stojković, reflecting information provided by the complainant Milosav Stojković to the OSCE, on 22 December 1999, at the internally displaced persons collective shelter of Brezovicë/Brezovica, Shtërpçë/Štrpce Municipality. The complainant stated that he had left his home in Ferizaj/Uroševac on 12 July 1999 and moved with his own family to Serbia proper. Later, as he had been informed that both his parents were still in Ferizaj/Uroševac and fearing for their security, he had decided to move them from there to Brezovicë/Brezovica. Once arrived in Brezovicë/Brezovica, he had requested to be escorted by the KFOR to Ferizaj/Uroševac, but this request was denied. Since it was considered safer for a woman to travel to Ferizaj/Uroševac at that time, his sister, Mrs Danica Stanojković, on 8 October 1999, went there escorted by the Polish KFOR. According to the report, in Ferizaj/Uroševac Mrs Danica Stanojković found through an Albanian neighbour, whose first name only was provided, that, on 5 or 6 September 1999, at about 23:00/24:00 hours her parents had been "harassed" by unknown persons and then "put in a car and driven away". The neighbour was reportedly afraid to speak to Mrs Danica Stanojković. The latter also found that someone had put a KLA poster on their parents' house with the name and surname of one X.I. on it. On 16 December 1999, the complainant Mr Milosav Stojković travelled to Ferizaj/Uroševac escorted by KFOR, and found that X.I. had moved into his parents' house. He also found that his own houses - he was the owner of four houses and one farm in Ferizaj/Uroševac - had been burnt down and that the name of one F.K. had been painted in red on their walls. The complainant stated that he did not know who the kidnappers of his parents were, but in his view they were most likely Albanians, as only 16 Serbs were living in Ferizaj/Uroševac at the time of the abduction. The complainant also stated that he had learnt from D.M., a witness from Ferizaj/Uroševac, who at that time was also living in Brezovicë/Brezovica, that his parents had been subject to harassment and ill-treatment in the period "25 June - 15 July 1999". On 6 October 1999, relevant authorities, including KFOR, ICRC, UNMIK, had been informed of the abduction.
32. It appears that on 31 January 2000, the OSCE gathered ante-mortem data concerning Mrs Darinka Stojković, from the second complainant, Mr Milosav Stojković. An OSCE Antemortem Data form bearing this date, 31 January 2000, and related to case no. 2000-000312, states that the complainant saw Mrs Darinka Stojković for the last time in March 1999 and that she went missing, along with her husband on 5 or 6 September 1999. The form also contains the name and address of R., indicated as the person who last saw the missing persons. In the file is also a printout from the MPU database generated in June 2004 and containing a Victim Identification Form for Mrs Darinka Stojković, MPU case

- no. 2000-000312. Apart from the ante-mortem information, this form also contains the full addresses and contact numbers for the first complainant and for Mrs Darinka Stojković's brother. Concerning Mr Milan Stojković, the file only contains an OSCE Antemortem Data Form, with no indication of the case file no., which, as well as providing ante-mortem data, states the name of the friend and neighbour, D.M. (the same as in § 31 above), who reportedly had information about the missing persons.
33. Entries included in an MPU Case Continuation Report for case no. 2000-000312 state that, on 7 February 2001, ante-mortem data concerning Mrs Darinka Stojković was received from the OSCE, that information had been inputted into the database on 8 June 2001 and subsequently updated on 18 June 2002. According to an entry dated 8 September 2000, on that date the MPU attempted to locate the relatives of the missing person at the "refugee hotel" "Elektrokosovo" in Brezovicë/Brezovica, without success.
34. The investigative file includes a Case Report of the UNMIK Police WCIU relating to the case of Mr Milan Stojković, registered under case no. 2001-000305. In the field "Date of Offence" the report indicates 1 October 1999, whereas in the fields "Date in" and "Date Updated", the report reads, respectively, 29 March 2001 and 10 October 2002. Under the field "Summary" the report states that Mrs Danica Stanojković had reported her parents as missing "since 1999" at the hands of KLA members, that "investigator could not find anything about the family, Stojković, disappeared", and that "investigation of the case is kept pending until new information". The report also states that, according to information received subsequently, Mr Milan Stojković and Mrs Darinka Stojković were in their house at a specified address in Ferizaj/Uroševac, unwilling to abandon the family property, and that at night a group of unidentified KLA members burst into their house and took them in an unknown direction.
35. According to an MPU Case Continuation Report relating to a different case (case no. 2001-00070) and dated 10 May 2001, on 1 May 2001, two UNMIK Police officers met with "the priest Z." to enquire about that particular case "and the other missing persons that he knows about". The priest stated that he fled during the conflict, after having worked for 20 years in Ferizaj/Uroševac. He stated that, when he left, he knew of four named Kosovo Serbs, including Mr and Mrs Stojković, who had remained behind. He later learnt from their respective wives that two of these Kosovo Serbs had been killed. They had been buried by the American KFOR in the Ferizaj/Uroševac cemetery. He had no specific information about Mr and Mrs Stojković, however he believed that they also had been killed and buried in that cemetery. The priest stated that he visited the cemetery and saw four "graves" "not covered completely by ground" and "in plastic bags". When he went again to the cemetery in October 2000 the graves were "empty" and he was informed that they had been "exhumed" by the Greek KFOR. The MPU report further states that the investigators went along with the priest to the cemetery where they were shown the empty graves.
36. According to an MPU Continuation Report, dated 11 May 2001, and related this time to four missing persons cases including those of Mr and Mrs Stojković, on that day, MPU investigators met with a commander of the Greek KFOR to ask which organisation had exhumed the graves referred to in § 35 above, believed to be those of the missing persons corresponding to the four cases. As the commander could not provide any information, they visited the hospital to check the morgue records and subsequently went to a private burial company. The owner of the company reportedly informed them that he had dealt with all

the bodies of people who had died during the conflict but he could not recall that the bodies of those Kosovo Serbs had been brought to the morgue. The investigators also tried to seek information from the local ICRC office, which could not be located.

37. Another MPU Case Continuation Report, dated 24 June 2001 and relating to the above mentioned four cases, including those of Mr Milan Stojković and Mrs Darinka Stojković, states that, in order to find out who had carried out the exhumation at the Ferizaj/Uroševac cemetery, MPU investigators had a meeting with an investigator from the ICTY. The latter, upon checking the ICTY database, informed them that the ICTY had carried out the exhumation of six bodies in the cemetery and that only one of them had been identified by the ICTY. However, for confidentiality reasons, no further information could be provided to the MPU. According to the report, the MPU subsequently retrieved from the OSCE five autopsy reports, supposedly corresponding to the bodies exhumed by the ICTY. The information in those reports was compared with the information concerning the four missing persons, however, they “did not completely matched”. The investigators concluded that further information was required in order to identify the bodies and, also, that the autopsy reports should be “checked” against the whole MPU database. However, no information is included in the file as to whether this was done and what the outcome was.
38. From a Grave Site Assessment Report (no. 0261/INV/02) of the MPU Resource and Investigation Pillar, included in the file and dated 23 August 2002, it transpires that the MPU conducted an investigation in August 2002 to verify the information that there were several bodies in the orthodox cemetery of Ferizaj/Uroševac belonging to persons killed in August 1999 and not yet identified. According to this report, on 15 August 2002, MPU investigators inspected the cemetery but they could not find any “unidentified graves”. The report states that, on 19 August 2002, they went to Shtërpçë/Štrpce and spoke to K.Z., the priest responsible for the Ferizaj/Uroševac cemetery. The latter told them that, in October 2000, an “international organisation” assisted by the Greek KFOR, had exhumed from the cemetery four unidentified bodies believed to belong to four Kosovo Serbs from Ferizaj/Uroševac, killed during the war. He added that a named doctor from the “Lapje Hospital” had recorded the exhumation on tape. The priest also told them that, in April 2001, an UNMIK Police officer from Prishtinë/Priština had visited him to ask about the issue of the unidentified bodies. The priest reportedly had given him the same information about the previous exhumation as well as the names of four persons from Ferizaj/Uroševac, including Mr Milan Stojković and Mrs Darinka Stojković, who were still missing. He stated that no feedback had been provided to him or the families and requested to be updated on the case. A handwritten note on the report states that, of the four above-mentioned missing persons cases, one had been closed, while the other three, including those of Mr Milan Stojković and Mrs Darinka Stojković, were still open.
39. According to the same Grave Site Assessment Report, on 20 August 2002, UNMIK investigators checked the MPU database and found that four MPU cases, among them case no. 2001-000305 and case no. 2000-000312, were related to the exhumation referred to above. The investigators noted that on 24 June 2001 the same “Continuation Report” had been compiled for all those cases, which stated that the ICTY had exhumed six bodies from the Ferizaj/Uroševac orthodox cemetery, that five autopsy reports had been provided by the OSCE and that the MPU officer in charge of the case would try to find a match between the autopsy reports and the entries in the MPU database. The report goes on to state that “as there is no further information on these files, it is possible that the identification of these

exhumed bodies was never done. Therefore, this file and the 4 other files are forwarded to the Identification Pillar for their examination and to provide our pillar with an update”.

40. Included in the file is the printout of an e-mail dated 27 April 2004, in which an UNMIK Police investigator states that, while “reviewing the file: #0261/INV/02 it was found that 5 bodies were previously exhumed by ICTY from Uroševac cemetery ...” and that, according to the information gathered during the investigation, the names of three missing persons, including Mr Milan Stojković and Mrs Darinka Stojković, should “be updated in the tracking system as presumptive”.
41. The investigative file also contains an MPU/Resource and Investigation Pillar Ante Mortem Report, which was completed between 10 May and 7 July 2004. According to this report, on 2 July 2004, MPU investigators went to Ferizaj/Uroševac and located the residence of the victims, which was found abandoned. On 4 July 2004, the same investigators returned to the house to take pictures of it (attached to the report) and interview neighbours with respect to the disappearance of Mr and Mrs Stojković. They reportedly could not find any witness willing to cooperate; however they were informed that an Albanian man, for whom only the first name, Mr B., and address was provided, had bought the missing persons’ house. The investigators reportedly tried to locate Mr B., to no avail. On 9 July 2004, the same investigators contacted by phone the missing persons’ granddaughter who stated that her grandparents, as well as her uncle, Mr Slobodan Stojković, were still missing, that her mother, Mrs Danica Stanojković, had been requested to provide blood samples at least three times; however “nothing positive was received and no grave site located”. The report also mentions that the disappearance of Mr Slobodan Stojković, missing since 22 June 1999, had been recorded under MPU case file no. 2000-000311. Concerning the availability of ante-mortem data for identification purposes, the report states that the investigators had run a check in the MPU database and found that the MPU case file nos. 2000-000312 and 2001-000305 dealt respectively with the case of Mrs Darinka Stojković and Mr Milan Stojković. The investigators recommended that the case shall be kept “pending”.
42. The investigative file also contains a EULEX Status Update on Mr and Mrs Stojković’s case, dated 11 December 2009, which states that the abduction of both victims was originally reported to the OSCE and that the case appears related to another case (no. 1999/00176). It is stated that additional witnesses, X.I. and D.M., were not interviewed and that there were no suspects in the case. The case had been reviewed in early 2009 and in July 2009 by EULEX prosecutors who had requested a continuation of the investigation. However, no measures had been taken at that date, since the case had not been included in the list of “prioritised investigations”.

D. EULEX response

43. As mentioned above (§ 4), on 18 December 2009 the Panel requested EULEX to provide additional information in relation to 43 complaints before the Panel. 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 [DOJ] building Archive room (not officially handed over from UNMIK to EULEX because no more “active” but dismissed, terminated or closed).”

44. 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 the creation of a centralised case registry by UNMIK DOJ, in 2003.
45. 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 complaints of Mrs Danica Stanojković and Mr Milosav Stojković, were 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."

III. THE COMPLAINTS

46. The complainants complain about UNMIK's alleged failure to properly investigate the abduction and disappearance of their parents. 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).
47. 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.

IV. THE LAW

A. Alleged violation of the procedural obligation under Article 2 of the ECHR

1. The scope of the Panel's review

48. 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.
49. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.

50. 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, the Convention on the Rights of the Child.
51. 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.
52. 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 § 50). 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.
53. 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).

2. The parties' submissions

54. The complainants in substance allege violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of Mr and Mrs Stojković. The complainants also state that they were not informed as to whether an investigation was conducted and what the outcome was.
55. In his comments on the merits of the cases, dated 14 October 2011, the SRSG at the outset states that as an investigation on the case is still pending with EULEX, not all available remedies have been exhausted and, therefore, the cases shall be declared inadmissible. At the same time, the SRSG “acknowledges that the exhaustion of remedies raises issues that are closely linked to the question of the effectiveness of the investigation and is therefore prepared to provide comments on the merits in relation to this aspect of the admissibility of the complaint”.
56. The SRSG further accepts UNMIK’s responsibility to investigate the case under Article 2 of the ECHR. According to the SRSG, under UNSC Resolution 1244 (1999) UNMIK was entrusted with a policing responsibility over the territory of Kosovo, which entailed “that UNMIK had a mandate to protect people in Kosovo against criminal activities and to conduct effective investigations into crimes”.
57. The SRSG states that according to the case-law of the European Court of Human Rights, “there is not a precise standard form of inquiry mandated by Article 2, instead it depends upon the circumstances of the particular killing, the processes of the relevant domestic legal system and the evaluation of the effectiveness of the specific investigation”. The SRSG refers to the judgment of the European Court of 18 May 2000 in the case of *Velikova v. Bulgaria* which states at paragraph 80 that :
- “... the nature and degree of scrutiny which satisfies the minimum threshold of the investigation’s effectiveness depends on the circumstances of the particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work. It is not possible to reduce the variety of situations which might occur to a bare check list of acts of investigation or other simplified criteria.”
58. In the SRSG’s view, “special circumstances” affecting UNMIK’s operational ability to investigate crimes, in particular in the initial phase of its mission “when its main focus was directed towards building up its own and local policing capacities” must be taken into account when applying the standards of an effective investigation under Article 2 of the ECHR. According to the SRSG, it shall be taken into account that UNMIK, during the initial phase of its mission, did not have “a functioning police apparatus” or the “relevant specialised personnel who could investigate all crimes committed”.
59. The SRSG further states that the abduction of the complainants’ parents occurred at some time between June and October 1999, that is shortly after the adoption of UNSC Resolution 1244 (1999) establishing UNMIK. Following the adoption of the Resolution, UNMIK Police was slow to deploy due to delays from the contributing countries, and KFOR was left to carry out certain policing functions until UNMIK had built up the necessary policing capacity. By mid-September 1999, UNMIK had around 1,300 international police officers

deployed but a whole police structure, including a system of criminal investigation units throughout Kosovo, had yet to be established. Further, UNMIK Police was required to carry out responsibilities in numerous areas in addition to investigating crimes, such as maintaining law and order, police trafficking and other tasks.

60. It should also be taken in account, in the SRSG's view, that the crime rate in Kosovo was "at its highest" in the immediate aftermath of the NATO bombing with numerous crimes committed against Kosovo Serbs, including killing, abductions and forced expulsions from houses and apartments. According to the SRSG "during the years 1999 and 2000, UNMIK Police received hundreds of reports on disappearances and killings and it was difficult to provide the necessary investigative efforts if the required manpower and policing capacity was not yet in place".
61. Another factor to take into account according to the SRSG is that UNMIK "had no sole control over the recruitment or selection of international police officers sent by UN member states". Often police officers had "insufficient if no experience at all" to investigate abductions and killings in an inter-ethnic setting and post-conflict context. Another serious problem was the regular rotation of police officers, which often leads to a "lack of investigative continuity". For these reasons, the SRSG argues that the standards set by the ECHR for an effective investigation "cannot be the same for UNMIK as for a State with a functioning, well organised police apparatus in place and with police officers it can carefully select, recruit and train".
62. Specifically concerning UNMIK's responsibility in locating missing persons, the SRSG states that the difficulties that UNMIK faced in carrying out its tasks, including searches of alleged graves, exhumations, autopsies, the comparison of ante-mortem and post-mortem data, DNA tests, the return of bodies and their belongings to the families, in relation to a vast number of missing persons in Kosovo, shall be taken into account. The SRSG states that as of March 2001, the UNMIK MPU had registered 3,399 persons missing from before, during and after the conflict and counted only 18 staff, including 7 international police, 3 KPS officers and 8 local employees. The SRSG quotes a report issued on 15 October 2002 by the Council of Europe Commissioner on Human Rights stating that "the resources, both human and material, available to Office on Missing Persons and Forensics, are, however, manifestly incommensurate with the task of rapidly resolving all these cases".
63. With respect to the investigation into the abduction and disappearance of the complainants' parents, the SRSG states that, as shown in the UNMIK Police files, "UNMIK has taken reasonable steps available to secure evidence concerning the incident, including inter-alia potential eye-witness testimony" and "evidence from other potential witnesses".
64. The SRSG further states that under normal circumstances, an investigation into the case should have been initiated "closely in time to the event, ideally no later than 2000 or 2001". The SRSG acknowledges that "instead, UNMIK police investigators searched for witness of the alleged abduction only in the summer of 2004" when they were unable to find information concerning the abduction that had occurred five years earlier. Also, in the SRSG's view, the refusal of neighbours to cooperate with the investigators "severely hampered" the investigation.

65. The SRSG also states that, despite several efforts, UNMIK was not able to locate the bodies of Mr and Mrs Stojković. A first search in this regard was initiated in spring 2001 but “was not concluded”. It resumed in summer 2002, “but again without conclusion”.
66. In his final “Observations on the Investigations”, the SRSG states that the OMPF “has confirmed that in accordance with established practice bone samples of five bodies exhumed by the ICTY have been sent by the Office of Missing Persons and Forensics to the International Committee of Missing Persons (ICMP) in order for the ICMP to make a comparison between the DNA data provided by the relatives of missing persons registered with the ICMP. Four bodies have been identified and returned to the families, one body has not yet been identified”. The SRSG concludes that it is therefore “apparent” that the bodies of Mr and Mrs Stojković were not amongst the five bodies exhumed by the ICTY. Despite a further request, no documentation has been provided to the Panel by UNMIK in support of this statement and conclusion.
67. The SRSG states that, taking into account all the above, and having considered the vast number of killings and disappearances that UNMIK had to investigate, the operational difficulties encountered by UNMIK especially in the first phase of its mission, and the “inherent deficiencies of a field mission police force”, the investigative actions carried out by UNMIK in this case “can be considered sufficient and effective”. The SRSG further states that “given that UNMIK has decided to continue the investigation, the case shall be considered inadmissible”.

3. The Panel’s assessment

Admissibility

68. 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 Mr and Mrs Stojković’s abduction and disappearance.
69. With respect to the SRSG’s objection that the complaint under Article 2 of the ECHR shall be declared inadmissible due to non-exhaustion of remedies, the Panel refers to its finding in the admissibility decision that the SRSG has not indicated any specific legal remedy available to the complainants with regard to the effectiveness of the investigation itself. For its part, the Panel does not see any such remedy. The Panel has also held that the fact that an investigation into the matter is still pending with EULEX has no bearing on the object of the complaints: the effectiveness of the investigation thus far (see Human Rights Advisory Panel (HRAP), *Stanojković and Stojković*, nos. 105/09 and 106/09, decision of 15 September 2011, § 15, see also, HRAP, *D.P.*, case no. 04/09, decision of 6 August 2010 and *Zdravković*, no. 46/08, opinion of 25 February 2013).
70. For this reason, the Panel rejects the SRSG’s objection and again declares admissible this part of the complaints.

Merits

- a) *Submission of relevant files*

71. The SRSO observes that all available files regarding the investigation have been presented to the Panel. However, in his comments on the merits of the complaints, the SRSO refers to investigative activities supposedly carried out by UNMIK which are not reflected in the investigative files (see § 66 above).
72. 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 SRSO 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, *Çelikkilek v. Turkey*, no. 27693/95, judgment of 31 May 2005, § 56).
73. 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.
74. 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).
- b) *General principles concerning the obligation to conduct an effective investigation under Article 2*
75. 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.

76. In order to address the complainant's allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that "[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
77. 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 § 53 above, at § 136).
78. 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).
79. Setting out the standards of an effective investigation, the Court has stated that "beside being independent, accessible to the victim's family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 53 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 in § 78 above, at § 312; and *Isayeva v. Russia*, cited in § 78 above, at § 212).
80. 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 § 76

above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazărev. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).

81. 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 § 79 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 53 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 § 53 above, at § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 64).
82. 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 § 78 above, at §§ 311-314; ECtHR, *Isayeva v. Russia*, cited in § 78 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).
83. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191). The United Nations also recognises the importance of the right to truth. In the words of the United Nations Secretary-General, "the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons ... it also implies the right to know the fate and whereabouts of the victim" (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; see also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations

committed in the context of State counter-terrorist initiatives; UN Document A/HRC/22/52, 1 March 2013).

c) *Applicability of Article 2 to the Kosovo context*

84. The Panel is conscious of the fact that the abduction and disappearance of Mr and Mrs Stojković took place shortly after the deployment of UNMIK in Kosovo in the immediate aftermath of the armed conflict, when crime, violence and insecurity were rife.
85. 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.
86. 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.
87. 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).
88. 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 § 79 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 § 82 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 § 78 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 78 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).

89. 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 § 76 above, at §§ 86-92; ECtHR, *Ergi v Turkey*, cited above, at §§ 82-85; ECtHR [GC], *Tanrikulu 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 § 78 above, at §§ 215-224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
90. 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 § 75 above, at § 1; HRC, *Abubakar Amirov and Aizan 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).
91. 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 § 20 above).

92. 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.

d) Compliance with Article 2 in the present case

93. At the outset the Panel notes in relation to this case a response from EULEX to the Panel's request for information (see §§ 43-45 above). In that response, EULEX informed the Panel that, in July 2009, a number of cases, which were not, for various reasons, officially handed over from UNMIK to EULEX, were "found" in the former UNMIK DOJ building. In the Panel's view, this is indicative of a possible general failure to comply with the obligation to ensure the proper handover of the investigative material.

94. Examining the particulars of this case, the Panel notes that there were flaws in the conduct of the investigation from its 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 § 42), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 79 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 §§ 22-23 above).

95. The Panel notes that UNMIK became aware of the abduction and disappearance of both Mrs Darinka Stojković and Mr Milan Stojković at some time in 2000, when a missing person file concerning Mrs Stojković was open. The Panel notes that, notwithstanding that the documents on that case file clearly indicated that she had gone missing along with her husband, a missing person case concerning the latter was opened by the MPU only in 2001. There is no explanation for this discrepancy.

96. The Panel also notes that, apart from opening the case and recording the information already gathered by the OSCE and the ICRC, UNMIK investigators did not conduct any meaningful investigation activity to further clarify the circumstances surrounding Mr and Mrs Stojković's abduction and identify the possible perpetrators. Notwithstanding the fact that several leads had been provided by the complainants in their statements to the OSCE, and thereafter to the UNMIK Police, none of them were followed up on by UNMIK Police. In particular, the Panel notes that, since the registration of the cases, the investigators had been provided with the names of potential witnesses, such as D.M. and R., and suspects, such as X.I., who had allegedly taken possession of and moved into the victims' house in Ferizaj/Uroševac; however the investigative file documents no efforts made by the investigators to locate and interview these persons.

97. Further, the investigative file shows no attempts by UNMIK Police, until 2004, to locate the alleged crime scene and examine it, to try and better understand the circumstances of the crime under investigation, which is a basic step in cases with little evidence. The Panel notes that, as acknowledged by the SRSG, only in July 2004, did UNMIK Police visit the residence of the victims in Ferizaj/Uroševac, which was found abandoned. On that occasion, the investigators were informed that some named person had bought the property; however no genuine attempt was made to locate this person or, again, to verify the information that the property had been at first occupied by X.I. following the disappearance of Mr and Mrs Stojković. The Panel also takes into account that, in order to be adequate, the investigation into such grave crimes should have also included at least an interview with the complainants, which was never done by UNMIK. Such interviews should have taken place as soon as possible and should be recorded and retained in the case file⁴.
98. The Panel notes that a few investigative steps were taken by the investigators in 2001 and again in 2002, in an effort to locate and identify bodies exhumed in 2000 by the ICTY and believed to be those of Mrs and Mrs Stojković. However, as per the SRSG's own admission, these enquiries, while originating from an investigation into a different missing person case (see § 35 above), were not brought to a conclusion due to the lack of any proper follow-up by the investigators. It is indeed documented in the investigative file that, on two different occasions, in 2001 and in 2002, it was recommended that further information should be gathered and that a proper comparison should be made with all the data available from the ante-mortem information, the autopsy reports of the unidentified bodies and the ICMP database; however this was not done at that time.
99. The Panel also notes that two years later, according to the e-mail of the UNMIK Police dated 27 April 2004 included in the file, investigators established the "presumptive" identity, based on traditional means, without DNA testing, of two of the bodies exhumed by the ICTY as those of Mr and Mrs Stojković.
100. The Panel further notes that, according to the Memorandum of Understanding between UNMIK and the ICMP, the latter should be informed of all cases of presumptive identifications in order to provide a confirmation or exclusion of identity through DNA testing. In this respect, the Panel notes the SRSG's comments that the OMPF "has confirmed that in accordance with established practice bone samples of five bodies exhumed by the ICTY have been sent by the Office of Missing Persons and Forensics to the International Committee of Missing Persons (ICMP) in order for the ICMP to make a comparison between the DNA data provided by the relatives of missing persons registered with the ICMP". According to the SRSG "four bodies have been identified and returned to the families, one body has not yet been identified" and it is therefore "apparent" that the bodies of Mr Milan Stojković and Mrs Darinka Stojković were not amongst the five bodies exhumed by the ICTY. However, the Panel notes that there is no indication of this activity in the investigative file.
101. 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 persisted, thus, in accordance with the continuing obligation to investigate (see § 81

⁴ 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.

above), bringing the assessment of the whole investigation within the period of the Panel's jurisdiction.

102. The Panel considers that, as Mr and Mrs Stojković's bodies had not been located and those responsible for the crime had not been identified, UNMIK was obliged to use the means at its disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform their relatives regarding any possible new leads of enquiry.
103. In this respect, the Panel notes that, according to the investigative file, no action whatsoever was taken to further review or investigate Mr and Mrs Stojković's case during this period.
104. The apparent lack of any adequate reaction from UNMIK Police may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
105. The Panel is also aware that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, such an investigation must be undertaken in a serious manner and not be a mere formality.
106. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards locating the missing persons, identifying the perpetrators and to bring 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 § 79 above), as required by Article 2.
107. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victim's next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
108. In this regard, the Panel notes that the investigative file shows that there has been no contact between UNMIK and the complainants with respect to the investigation. The Panel notes that UNMIK Police tried to contact the first complainant, Mrs Danica Stanojković, only in July 2004, speaking to her daughter by phone. The purpose of this contact is not clear. In particular, the complainants' family was not informed of the progress of the investigation thus far, including the possibility that the bodies of their missing relatives were among those previously exhumed by the ICTY in Ferizaj/Uroševac. Nor was further ante-mortem data sought from the family to assist identification. The Panel therefore considers that the investigation was far from accessible to the complainants as required by Article 2.
109. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and disappearance

of Mr and Mrs Stojković. There has been accordingly a violation of Article 2, procedural limb, of the ECHR.

B. Alleged violation of Article 3 of the ECHR

110. The Panel considers that the complainants invoke, in substance, a violation of the right to be free from inhumane or degrading treatment, guaranteed by Article 3 of the ECHR.

1. The scope of the Panel's review

111. 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 §§ 48 - 53 above).

112. 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 § 89 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 79 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).

113. 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).

2. The parties’ submissions

114. The complainants in essence allege that the lack of information and certainty surrounding the abduction and disappearance of Mr and Mrs Stojković, particularly because of UNMIK’s failure to properly investigate his case, caused mental suffering to them and their family.

115. The SRSG does not provide any comments with respect to the alleged violation of Article 3.

3. The Panel’s assessment

a) *General principles concerning the obligation under Article 3*

116. 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.
117. 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 § 75 above, at § 150).
118. 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.
119. 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. Uruguay*, 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).
120. 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 § 112 above, at § 94).
121. 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 in § 112 above, at § 96; ECtHR, *Osmanoğlu v. Turkey*, no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine*, no. 28005/08, judgment of 14 March 2013, § 201).

122. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya*, Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v. Algeria*, views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; *Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (...), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have lead to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 90 above, at § 11.7).
123. 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 reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiş v. Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
124. 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 § 120 above, at

§ 109; ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, § 147; ECtHR, *Bazorkina v. Russia*, cited in § 89 above, at § 140).

125. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117-118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107-110). However, in contrast, in the case under the Panel's consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant's mental distress caused by the commission of the crime itself.

126. 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).

b) Applicability of Article 3 to the Kosovo context

127. 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 §§ 84–93 above).

128. 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 § 20 above).

129. 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.

130. 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.

c) Compliance with Article 3 in the present case

131. 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.

132. The Panel notes the proximity of the family ties between the complainants and Mr and Mrs Stojković. The complainants are the daughter and son respectively of the victims.
133. The Panel further notes that it appears that the complainants were never contacted by UNMIK authorities during the investigation, including for the purpose of gathering further information on the abduction and providing an update on the investigation. The Panel also notes that, for a prolonged period of time, the investigating authorities failed, as described above, to carry out actions to confirm or exclude the possibility that the bodies of Mr and Mrs Stojković were among a group of bodies exhumed by the ICTY in the Ferizaj/Uroševac cemetery and to inform the family accordingly. The Panel reiterates that from the standpoint of Article 3 it may examine UNMIK's reactions and attitudes to the complainants in its entirety.
134. Drawing inferences from UNMIK's failure to provide another plausible explanation for the absence of sustained and regular contact with the complainants, the Panel considers that this situation, which continued into the period of the Panel's temporal jurisdiction, caused grave uncertainty to the complainants and their family about Mr and Mrs Stojković's fate and the status of the investigation.
135. 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 case and as a result of their inability to find out what happened to Mr and Mrs Stojković. In this respect, it is obvious that, in any situation, the pain of a daughter and son who have to live in uncertainty about the fate of their parents must be unbearable.
136. 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.

V. CONCLUDING COMMENTS RECOMMENDATIONS

137. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
138. 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 and prosecute those responsible for the abduction and disappearance of Mr and Mrs Stojković, 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.
139. 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.

140. 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 § 22), UNMIK's responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
141. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

- In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the diplomatic means available to it *vis-à-vis* EULEX and the Kosovo authorities, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and disappearance of Mr and Mrs Stojković will be established and that perpetrators will be brought to justice. The complainants and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
- Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK's failure to adequately investigate the abduction and disappearance of Mr and Mrs Stojković, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainants and their family 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 distress and mental suffering incurred by the complainants 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:**
 - a. URGES EULEX AND OTHER COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF MR AND MRS STOJKOVIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
 - b. PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF MR AND MRS STOJKOVIĆ, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS;**
 - c. TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION OF THE COMPLAINANTS FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR.**
 - d. TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**

- e. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
- f. **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
Executive Officer

Marek Nowicki
Presiding Member

ABBREVIATIONS AND ACRONYMS

CCIU - Central Criminal Investigation Unit
CCPR – International Covenant on Civil and Political Rights
DOJ - Department of Justice
DPPO - District Public Prosecutor’s Office
ECHR - European Convention on Human Rights
ECtHR- European Court of Human Rights
EU – European Union
EULEX - European Union Rule of Law Mission in Kosovo
FRY - Federal Republic of Yugoslavia
HRAP - Human Rights Advisory Panel
HRC – United Nation Human Rights Committee
IACtHR– Inter-American Court of Human Rights
ICMP - International Commission of Missing Persons
ICRC - International Committee of the Red Cross
ICTY - International Criminal Tribunal for former Yugoslavia
KFOR - International Security Force (commonly known as Kosovo Force)
KLA - Kosovo Liberation Army
MoU - Memorandum of Understanding
MPU - Missing Persons Unit
NATO - North Atlantic Treaty Organization
OMPF - Office on Missing Persons and Forensics
OSCE - Organization for Security and Cooperation in Europe
RIU - Regional Investigation Unit
SRSG - Special Representative of the Secretary-General
UN - United Nations
UNHCR - United Nations High Commissioner for Refugees
UNMIK - United Nations Interim Administration Mission in Kosovo
VRIC - Victim Recovery and Identification Commission
WCU - War Crimes Investigation Unit