



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

OPINION

Date of adoption: 10 September 2015

Cases nos: 68/09, 83/09, 235/09, 236/09 and 256/09

Budimirka MIRIĆ, Ljiljana STOJKOVIĆ and Dimitrije SPASIĆ

against

UNMIK

The Human Rights Advisory Panel, on 10 September 2015,
with the following members taking part:

Marek Nowicki, Presiding Member
Christine Chinkin
Françoise Tulkens

Assisted by
Andrey Antonov, Acting Executive Officer

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

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

I. PROCEEDINGS BEFORE THE PANEL

1. The complaints of Mrs Budimirka Mirić were introduced on 3 April 2009 (case no. 68/09) and on 30 April 2009 (case no. 256/09). The complaint of Mrs Ljiljana Stojković (case no.

83/09) was introduced on 15 April 2009. The complaints of Mr Dimitrije Spasić (cases nos 235/09 and 236/09) were introduced on 14 April 2009. All complaints were registered on 30 April 2009.

2. On 24 July 2009, the cases nos 68/09 and 83/09 were communicated to the Special Representative of the Secretary-General (SRSG)¹, for UNMIK's comments on admissibility and merits. In response, by letter dated 3 August 2009, the SRSG advised the Panel that UNMIK could not provide comments because of the lack of facts presented by the complainants.
3. On 18 December 2009, the Panel addressed the European Union Rule of Law Mission in Kosovo (EULEX) with a request for information in relation to the availability of any investigative files with regard to 43 complaints, including those of Mrs Budimirka Mirić (case no. 68/09) and Ms Ljiljana Stojković (case no. 83/09).
4. On 23 December 2009, the Panel requested all complainants to provide additional information. No response to this request was received.
5. On 23 March 2010, EULEX provided a response to the Panel's aforementioned request of 18 December 2009.
6. On 21 April 2010, the Panel reiterated its request for information to Mrs Ljiljana Stojković.
7. On 29 April 2010, the Panel received Mrs Ljiljana Stojković's response.
8. On 12 May 2010, the Panel repeated its request for information to Mr Dimitrije Spasić. He responded by a letter dated 14 May 2010.
9. On 9 September 2010, the Panel decided to join all the above mentioned cases, pursuant to Rule 20 of its Rules of Procedure.
10. On 29 September 2010 and 20 January 2011, the Panel reiterated its request for additional information to Mrs Budimirka Mirić.
11. A response from Mrs Budimirka Mirić was received by the Panel on 23 February 2011.
12. On 23 April 2012, all complaints were communicated to the SRSG, for UNMIK's comments on admissibility.
13. On 4 June 2012, the SRSG provided UNMIK's response.
14. On 17 August 2012, the Panel declared the complaints nos. 68/09, 83/09, 235/09 and 236/09 fully admissible and complaint no. 256/09 partially admissible.

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

15. On 8 September 2012, the Panel forwarded its decision on admissibility to the SRSG, requesting UNMIK's comments on the merits of the complaints.
16. Following the Panel's inquiries, on 4 October 2012, UNMIK requested the Archives and Records Management Section of the UN Headquarters in New York to locate and return to UNMIK a number of investigative files related to a number of complaints before the HRAP.
17. On 14 December 2012, UNMIK received the requested investigative files from the UN Headquarters in New York. On 17 December 2012, UNMIK presented those documents, including a file related to one of the two complaints of Mr Dimitrije Spasić (case no. 235/09), to the Panel.
18. On 8 July 2014, the Panel requested additional information from the Prizren Basic Public Prosecutor's Office (BPPO).
19. On 4 August 2014, the Prizren BPPO provided its response.
20. On 11 December 2014, the Panel addressed UNMIK Police with a request for additional information. UNMIK Police forwarded this request to the Kosovo Police Service (KPS). No response from the KPS was received.
21. On 27 February 2015, the Panel requested the Kosovo International Security Force (KFOR) to provide additional information.
22. On 13 March 2015, KFOR provided its response.
23. On 26 March 2015, the Panel requested additional information from the Kosovo Special Prosecutor's Office (SPRK).
24. On 8 May 2015, the SPRK provided its response.
25. On 29 June 2015, the Panel requested further additional information from the Prizren BPPO.
26. On 25 June and 22 July 2015, upon the Panel's request, the SPRK provided additional information.
27. On 2 July 2015, the Prizren BPPO provided its response.
28. On 22 July 2015, the SRSG presented UNMIK's response in relation to the merits of the complaints, together with electronic copies of investigative files relevant to the case.
29. On 14 August 2015, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning this joint case could be considered final.
30. On 26 August 2015, UNMIK provided its response.

II. THE FACTS

A. General background²

31. The events at issue took place in the territory of Kosovo shortly after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
32. 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, 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.
33. 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.
34. 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

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>).

forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.

35. 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.
36. 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 1,653 are listed as still missing by the International Committee of the Red Cross (ICRC) as of May 2015.
37. 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.
38. 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.
39. 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”.

40. 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. A specialised Bureau for Detainees and Missing Persons (BDMP), responsible for centralising information received by civilian officers, was established within the Office of the SRSG³.
41. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document reiterating, among other things, its commitment to solving the fate of missing persons from all communities, and recognizing that the exhumation and identification programme is only a part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. All information collected by the BDMP was transferred to the OMPF⁴. 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.
42. 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. However, UNMIK retained some responsibility in the field of international cooperation in criminal matters.
43. On the same date, UNMIK and EULEX signed a Memorandum of Understanding on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.

³ See: Brasey V. *Dealing with the Past: The forensic-led approach to the missing persons issue in Kosovo* // Politorbis Nr. 50 – 3, 2010, p. 163.

⁴ See: *Ibid.*, p. 165.

B. Circumstances surrounding the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić, and abduction and killing of Mr Srećko Đekić

44. Mrs Budimirka Mirić is the daughter of Mrs Draga Đekić (case no. 68/09) and sister of Mr Srećko Đekić (case no. 256/09). Mrs Ljiljana Stojković is the daughter of Mrs Vasiljka Nikolić (case no. 83/09). Mr Dimitrije Spasić is the son of Mr Jevta Spasić (case no. 235/09) and Mrs Bosiljka Spasić (case no. 236/09). At the moment of their disappearance, Mrs Draga Đekić was 72 years old, Mrs Vasiljka Nikolić was 70 years old, Mr Jevta Spasić was 72 years old, Mrs Bosiljka Spasić was 69 years old, while Mr Srećko Đekić was 48 years old.
45. The complainants inform the Panel that their relatives were abducted from Dojnicë/Dojnice village, Prizren municipality, in June 1999 by KLA members. Specifically, Mrs Draga Đekić was reportedly abducted on 12 June 1999, Mr Jevta Spasić and Mrs Bosiljka Spasić on 26 June 1999, and Mrs Vasiljka Nikolić and Mr Srećko Đekić on 27 June 1999. All the complainants state that their relatives were abducted during an orchestrated attack by the KLA on that village.
46. The mortal remains of Mr Srećko Đekić were located and identified by the OMPF, which is confirmed by a copy of a Confirmation of Identity issued by the OMPF on 19 October 2006. The complainant states that Mr Srećko Đekić's mortal remains were returned to the family on 3 December 2007.
47. The complainants state in common that all disappearances were immediately reported to KFOR, UNMIK, the Yugoslav Red Cross, and the Serbian Ministry of Internal Affairs (MUP).
48. Ms Budimirka Mirić and Ms Ljiljana Stojković also inform the Panel that on unspecified dates they submitted criminal reports against unknown KLA members responsible for the abduction of around 20 victims, including all the above-listed persons, to the UNMIK International Public Prosecutor (IPP) at the Prizren District Public Prosecutor's Office (DPPO). None of them have received any reply in that respect.
49. The whereabouts of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić have remained unknown. The ICRC tracing requests for them remain open⁵.
50. The names of all above-listed victims are included in the list of missing persons, which was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF⁶.

⁵ See: ICRC Family Links online database [electronic source]: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 9 September 2015).

⁶ The OMPF database an electronic source not open to public. The Panel accessed it with regard to this case on 9 September 2015.

51. The entry in relation to Mr Srećko Đekić in the online database maintained by the ICMP⁷ reads, in relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this missing person on 10-03-2006 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters.”
52. The entries in relation to the other four victims who are still missing read “Sufficient Reference Samples Collected” and “DNA match not found”.

C. The investigation

1. Disclosure of relevant files

53. In the present case, UNMIK presented to the Panel copies of the documents in relation to the actions undertaken by the UNMIK OMPF and UNMIK Police, which were located in Kosovo. At the Panel’s request, the UN archive in New York returned to UNMIK the investigative documents related to the case of Mr Dimitrije Spasić (case no. 235/09), which UNMIK presented to the Panel (see §§ 16 - 17 above). On 26 August 2015, UNMIK confirmed to the Panel that all available investigative documents have been provided to it (see § 30 above).
54. On 22 July 2015, the SPRK confirmed that the entire original case file was in their archive until 5 November 2013, when it was transferred to the EULEX WCIU.
55. The assessment below is based on the analysis of all materials available to the Panel, including those provided by UNMIK and by the complainants, as well as those obtained by the Panel itself.
56. With regard to the disclosure of the information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. Considering that some judicial proceedings and investigations into the events connected to this case may still be ongoing, the Panel clarifies that, although its assessment of the present case stems from a thorough examination of all available documentation, only a very brief synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

EULEX clarification

57. As mentioned above (§§ 3 and 5), 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 PTC building Archive room (not officially handed over from UNMIK to EULEX because no more “active” but dismissed, terminated or closed).”

⁷ See: ICMP Missing Persons Inquiry online database [electronic source]: http://www.icmp.org/fdmsweb/index.php?w=mp_details&l=en (accessed on 9 September 2015).

58. In the same response, EULEX added that the search was not exhaustive, as the available sources did not provide information on the following:
- cases, criminal reports or information that UNMIK Police never transferred to UNMIK prosecutors, or otherwise never reached UNMIK prosecutors;
 - cases which were handled by UNMIK Police and were then transferred to local police or prosecutors, without reporting to UNMIK or EULEX prosecutors;
 - many cases which were handled by UNMIK prosecutors prior to creation of a centralised case registry by UNMIK DOJ, in 2003.
59. 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 forty one cases, including those of the complainants in this case, 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."

2. Overview of the OMPF / MPU files in relation to the victims

a) OMPF and MPU file

Documents in relation to all victims (MPU case no. 0283/INV/04)

60. The file contains an MPU Ante Mortem Report on the case no 0283/INV/04 with regard to Mr Srećko Đekić, which was initiated on 29 September 2004 and closed on 26 November 2004. In the field labelled "Nature of Information" it reads:

"On April 30th 2004 WCU received information concerning 15 Serbian victims, who were buried in Korisa village, Prizren region.

...

7. NIKOLIC, Vasiljka ... DOB 27/11/1928 MPU File 2002-000627
8. DJEKIC, Srećko ... DOB 09/09/1950 MPU File 2003-000015
9. SPASIC, Jefta ... DOB 18/02/1927 MPU File 2000-001701
10. SPASIC, Bosiljka ... DOB 04/01/1930 MPU File 2000-001701

..."

61. The field labelled "Further Investigation/Conclusion" states that an informant was not able to find the location of the gravesite; when new information is received a new investigation and exhumation would be conducted. The status of this file is "pending".
62. A printout of the MPU database, dated 26 November 2004, named "Investigation Details for Investigation Number: 0283/INV/04" states "SUB COMMISSION" in the field labelled "Requesting Agency". The field labelled "Request Summary" states (original text preserved):

"The sub Commission in Belgrade and the CCK request for exhumation. AC, AM MPU File 2003-000014, NIKOLIC Vasiljka MPU File 2002-000627, DJEKIC Draga MPU File 2002-000621, DJEKIC Srećko MPU File 2003-000015, [RT] MPU File 2003-000117, [RM] MPU File 2003-000110, [ST] MPU File 1999-000005, [SZ] MPU File 2003-000024, [SN] MPU File 2002-000544 and [SB] MPU File 2002-00375".

63. The field labelled “Missing Persons Details” contains names and case details for Mrs Bosiljka Spasić and Mr Jefta Spasić (MPU file no.2000-001701), Mrs MS (MPU File 2001-001305) and Mrs SS (MPU File 2001-001302). The filed labelled “Invest. Notes” reads “... Site could not be pointed out. Pending until new information.”
64. The file further contains an entry concerning the events in Dojnicë/Dojnice village from a the publication *Abductions and Disappearances of Non-Albanians in Kosovo 24 March 1999 – 31 December 2000* (p.p. 220 - 221) by the Humanitarian Law Center (HLC), which reads as follows (original text preserved):

“Spasić, Jefta (M, 70); his wife Spasić, Bosiljka (69); Stefanović, Milica (F, 70); Stevanović, Slavica (F, 40); Antić, Čedomir (M, 70); Antić, Marija (F, 70); Nikolić, Vasiljka (F, 72); Djekić, Draga (F, 70); Djekić, Srečko (M, 50); N.B. (M, 75); S.M.; Radivojević, Tomislav (M, 70); his wife Radivojević, Moma (70); Stojković, Trifun (M, 84); Stojković, Živka (F, 80); Stojković, Natalija “Natka” (F, 79), last remaining Serbs in Dojnice, Prizren Municipality; Natalija Stojković’s brother (last name unknown), Bogdan, from Brbičane (Berbiqane), Prizren Municipality – abducted on 27 June 1999.

Srečko Djekić, N.B. and S.M. were able to get away and conceal themselves until they were found by KFOR and escorted to the Serbian Orthodox seminary. A few days later, Srečko Djekić left the seminary to meet with an Albanian acquaintance from Skorobište, Prizren Municipality, and failed to return. The son of Jefta Spasić, [D.S.], stated that his father discussed the surrender of arms by the Dojnice villagers with [E.R.], the local KLA commander, and [R.S.], also a KLA member and a former Yugoslav Army officer. The agreement was for a KLA group to come to Dojnice to collect the weapons. This did not happen as a clash between Serbian forces and the KLA occurred in neighboring Skorobište village that same day. The Dojnice villagers heard about the fighting and sought refuge at the Serbian Orthodox seminary in Prizren. A few days later, the Spasićs and about a dozen other Serbs returned to their village.

D.S. told the HLC that the KLA attacked Dojnice on the day the villagers returned, torched the houses and took away the Serbs. His friend B.D. was in a field not far away when he saw smoke rising above the village, went to investigate and saw KLA members loading the villagers into a truck and driving them away. He observed three KLA men lifting the elderly Spasić into the truck as the women stood in a group on the road.

Another HLC witness [A.] stated that a Dojnice villager, [B.], was in a field from where he saw a large number of KLA members in the village and the houses burning. He went immediately to Prizren and reported the attack to KFOR. When KFOR reached Dojnice, the houses were still burning but no one was there. Shortly afterwards, they heard Srečko Djekić, S.M. and N.B. calling from their hiding place. Djekić had been wounded in the leg. The KFOR members gave him first aid and then

took them all to the seminary. A few days later, Albanians from Skorobište asked for a meeting with Djekić. He left the seminary to keep the appointment and never returned.

Source: HLC, witness statement.”⁸

Documents in relation to Mr Srećko Đekić (MPU no 2003-000015, OMPF no. ACT 01/001B)

65. This part of the file contains an undated ICRC Victim Identification Form for Mr Srećko Đekić, completed in handwriting, in Serbian, presenting data apparently collected by the ICRC in 2001 (see § 50 above). Besides his ante-mortem description, this document has the name and contact details of one of the complainants, Mrs Budimirka Mirić, in Serbia proper. Its field labelled “Alleged place of burial” also states: “in the yard of his house (killed by an automatic fire), under a pear tree”.
66. The file further contains an MPU Victim Identification Form, completed in handwriting, in English, on 1 February 2003. One of the fields reads: “The MP [Missing Person] was killed on 12/06/99 in the meadow nearby house (3 m away of house). It is according to the story of a Muslim from Ljubižde village, Prizren municipality who told [that to] the MP’ relative in Germany. The sister of MP has more info about the murders.” The field “Known burial site details” further reads: “After the murder, the family heard that the MP was buried in the garden or in front of the house”. The form also provides the name and contact details of Mrs Budimirka Mirić, in Serbia proper.
67. The file further contains an MPU Case Continuation Report for the case no. 2003-000015, which has two entries reflecting the input of information into the MPU database, dated 10 February and 13 April 2003.
68. Further in the file is an OMPF document named “Dojnice event – 27th June 1999. Site code ACT”. The document apparently consists of 5 pages, but page 2 is not in the file. The “Background” part of this document summarises the statement of a witness, given to the OMPF (original text and emphasis preserved):
- “ 1. [N.B.] – On 27th June 1999 in the morning at about 07.00 hrs he left the village ... At 09.00 hrs he heard automatic fire coming from the village and smoke and flames out of the houses. From his place he could not see people who were shooting ... He approached the village late afternoon at about 17.00 hrs and saw looted and burned houses. The whole village was abandoned. Afterwards he went to Prizren and informed KFOR and spent a night in Theological school. He did not see in the school (Prizren) people from Dojnice. Next day 28th June 1999 with KFOR he went back to Dojnice where he met Djekic Srecko and M.S. Srecko told him and KFOR that he had seen villagers in the morning on 27th June being rounded up, put on the tracktor-trailer and taken out of the village on the way to Skorobiste (only the way to get in or out of Dojnice). The same day (28th June 1999 [B.], Srecko and M.S. were driven by KFOR to Prizren.

⁸ Electronic version of the same publication can be found at the HLC webpage [electronic source] - <http://www.hlc-rc.org/wp-content/uploads/2013/02/KO-Abductions-and-disappearances-of-non-Albanians-in-Kosovo-1.pdf>, see p. 181 (accessed on 19 August 2015).

[N.B.] passed away few years ago.

2. Djekic Srecko – On 27th June 1999 he went out of the village with cattle in the forest some 150 m from the last house of the village. According to N.B's statement Srecko saw villagers being taken out of the village but he was obviously afraid and ran away. Later on the same day he [further text unavailable due to the missing page no. 2 of this document]”.

69. The field labelled “Enquiry” of this document states that the OMPF visited the village, on 5 April and 11 May 2005. During the first visit, an informant was not able to precisely point out the location of Mr Srećko Đekić's grave. On a second visit, another person showed the grave to the OMPF team.

70. This document continues that, under the condition to remain anonymous, this second informant stated to the OMPF that (original text and emphasis preserved):

“... the people from Dojnice were abducted and killed within one day (27th June 1999) and bodies were thrown to the stream passing near by (Between Dojnice and Skorobiste villages). The informant witnessed the attack of Dojnice and saw that the bodies were deposited on stream bank. Two days later, he found 12-14 bodies on the stream bank. ... Never the less of bad smell, which was noticed in Skorobiste village the bodies remained unburied. ... the people from the nearest village, Skorobiste witnessed how human remains were scattered by dogs. According to the witness the leader of the operation (kidnapping and killing the people from Dojnice) was [S.] currently KPS officer in Prizren police station.

The witness underlined several times that his name should stay unknown otherwise he and his family would be in danger.”

71. The field labelled “Conclusion” of this document states: “Location of Srecko Djekic's grave could be included in the OMPF exhumation plan for 2006. The terrain along stream bank could be searched for human remains as possible material for identification of the victims.” There are also photographs of the area attached that show the way to the probable grave site.

72. The file further contains a second page of an Order for Exhumation, Autopsy and Expert Analysis, issued by an International Judge at the Prizren District Court, on 10 April 2006. In the reasoning section, the Order briefly repeats the information about the abduction of the residents of Dojnicë/Dojnice, and adds the following (original text preserved):

“On 30 June 1999, [X.] ... met with Srecko in Prizren and invited him to go to Dojnice offering him protection and accommodation. Some days later on the 5th July, [X.] heard gunshots coming from Dojnice. The next day he found Srecko's dead body in front of his house. He buried the body in Srecko's yard under a pear tree.”

73. Also in the file is a set of OMPF/MPU documents related to an exhumation in Dojnicë/Dojnice village, which took place on 12 May 2006 (site code ACT). One

skeletonised set of complete human remains was located and sent for autopsy (coded ACT 01/001B). A set of photographs depicting this exhumation is also in the file.

74. According to the identification documents available in the file, mortal remains later identified as those of Mr Srećko Đekić were located in Dojnicë/Dojnice village (exhumation site code ACT) on 12 May 2006. The autopsy was conducted on 23 June 2006; the cause of death was established to be a “gunshot to the chest”. Two bullets and a separate metal fragment was found with these human remains.
75. The DNA match was confirmed by the ICMP on 18 September 2006. According to the file, Mr Srećko Đekić’s mortal remains were handed over to Mrs Budimirka Mirić, and the file officially closed, on 1 December 2006. The file indicates that his mortal remains were subsequently buried in Kragujevac, Serbia proper, on 2 December 2006.

Documents in relation to Mrs Draga Đekić (MPU no. 2002-000621)

76. The file in relation to Mrs Draga Đekić contains an undated ICRC Victim Identification Form, completed in handwriting, in Serbian, with the data collected by the ICRC in 2001 (see § 50 above). Besides her ante-mortem description, this document has the name and contact details of Mrs Budimirka Mirić, in Serbia proper. The field entitled “Other people who disappeared with the missing person” reads “Đekić Srećko (son) and a big number of villagers”.
77. Further in the file is an MPU Case Continuation Report for the case no. 2002-000621, which has two entries reflecting the input of information into the MPU database, both dated 24 August 2003.

Documents in relation to Mrs Bosiljka Spasić (MPU no. 2000-001701)

78. The file in relation to Mrs Bosiljka Spasić contains an undated ICRC Victim Identification Form, completed in handwriting, in Serbian, with the information collected by the ICRC in 2001 (see § 50 above). Besides her ante-mortem description, this document has the name and contact details of one of the complainants, Mr Dimitrije Spasić, and V.P., a relative of Mrs Bosiljka Spasić, in Serbia proper. The field labelled “Other people who disappeared with the missing person” reads: “a spouse Jevta Spasić and 15 more residents of Ljubižde village”.
79. Further in the file is an MPU Case Continuation Report on the case no. 2000-001701, which has three entries reflecting inputs of information into the MPU database, dated 12 December 2000, 22 and 27 December 2002 respectively.
80. Also in the file is a letter from the Provincial Team for Liaison with KFOR, of the Serbian MUP, dated 2 November 2000, addressed to KFOR; the case no. 2000-001701 is handwritten on top of the English translation of this document. This letter states that a criminal report, no. KU 417/2000, was filed by Đ.S. against unknown KLA members, who on 27 June 1999 abducted Mr Jevta Spasić and Mrs Bosiljka Spasić, from the village Dojnicë/Dojnice, together with a “big number of persons, Serbian nationality”, who were also residents of that

village. According to the text, the actual criminal report was attached to this letter, but it is not in the file presented to the Panel.

81. The file also contains a photograph of Mrs Bosiljka Spasić and Mr Jevta Spasić together, with the following text from an unknown source (original preserved):

“SPASIC BOSILJKA, F, 70, disappeared June 27 1999 in the village of Dojnice, Prizren, together with her husband Jevta and 15 other villagers. Inside the burned village, on July 24th 1999, KFOR troops found 15 bodies. Source: LA Times, 11th August, 1999/HLC,O P cpt”

Documents in relation to Mr Jevta Spasić (MPU no. 2000-001701)

82. The file in relation to Mr Jevta Spasić also contains an undated ICRC Victim Identification Form for him, completed in handwriting, in Serbian, with the information collected by the ICRC in 2001 (see § 50 above). Besides his ante-mortem description, this document has the name and contact details of Mr Dimitrije Spasić and O.T., a relative of Mr Jevta Spasić, in Serbia proper. The field labelled “Other people who disappeared with the missing person” reads: “a spouse Spasić Bosiljka and 15 more residents of Ljubižde village”.
83. Further in the file are copies of the same MPU Case Continuation Report and the same letter from Serbian MUP (see §§ 79 - 80 above).
84. In addition, a file in relation to an investigation into Mr Jevta Spasić’s abduction and disappearance was received from the UN Archives in New York (see §§ 16 and 17 above). However, no supplementary documents to the file already in the Panel’s possession was found in that file.

Documents in relation to Mrs Vasiljka Nikolić (MPU no. 2002-000627)

85. No documents in relation to Mrs Vasiljka Nikolić, except for an indication of a case number (2002-000627), which is mentioned in the above-mentioned MPU document (see § 62), are found in the file.

b) WCIU file

Case no. 2002-00124

86. This part of the file relates to the documents handed over by the Serbian “Coordination Centre for Kosovo and Metohija” (CCKM) to an UNMIK IPP. According to a letter from the President of the CCKM, dated 29 October 2002, the following documents were handed over:
- Overview of the mass grave locations and grave sites in Kosovo;
 - List of persons who have committed abductions in Kosovo;
 - Overview of the possible locations of suspected illegal detention centres in Kosovo;
 - Information on the persons holding offices at Interim Institutions in Kosovo, who have connections with the KLA;

- List of persons who organised and committed murders, abductions, terroristic acts and other crimes aiming at the expulsion of the Serbian and other non-Albanian population from Kosovo.

87. The file contains only the first list of the five reportedly received from Serbian prosecutors. It mentions A.R. as a suspect in the killing of Mrs Draga Đekić and Mr Srećko Đekić, and D.H. as a suspect in the killing of Mr V.S. This list further provides names and personal details of many other KLA members who operated in the Prizren area, as well as information on the KLA structure in the area, including the commanders.
88. There are a number of documents related to the assessment of this information by UNMIK Police. No follow up action on the information provided in those lists transpires from the document in this part of the file.
89. According to a CCIU File Update / Close Form on the case no. 2002-00124, dated 26 May 2003, present in the file, the priority of this information is “low” and the case is marked “closed”. The field “Details” provides the following explanation (original text and emphasis preserved):

“This file number contains not an individual case.

It is well known widespread collection of material allegations about war crimes.

This material (5 binders) were handed over by the International Prosecutor ...The source is ministry of Interior in Serbia.

The material has been checked by the [CCIU]...

Most of the described incidents are not known to CCIU, some ... are known.

The material is vague, sources (witnesses, evidences etc) are missing to support the allegation. On the other hand direct accusations against Albanian suspects are raised.

It is recommended to keep this file number pending and being used by the war crime team leader as a source. Because of high number only a limited number of allegations may end up in investigations, but the material might be used to support ongoing investigations.”

Case no. 2005-00051

90. The file also contains eight criminal reports, in Serbian, filed in 2005 with the IPP at the Prizren DPPO. Seven of these Reports have almost identical text, highlighting that on 27 June 1999 a group of armed KLA members abducted 17 Kosovo Serbian residents of Dojnicë/Dojnice village, whose whereabouts have remained unknown from that time. According to the translator’s footnotes at the bottom of the English translations of these Reports, all of them were done on 9 March 2005; all of them have the no. 2005/00051 affixed on their first page.
91. Of those seven, two were filed by Mrs Budimirka Mirić (code nos. EC-19 and EC-20, in relation to Mr Srećko Đekić and Mrs Draga Đekić), one by Mr Dimitrije Spasić (code no. EC-26, in relation to Mr Jefta Spasić and Mrs Bosiljka Spasić), one by Mrs Liljana Stojković (code no. EC-24, in relation to Mrs Vasiljka Nikolić), two by Mr Ž.R. (code nos EC-18 and

EC-22, with regard to Mr T.R. and Mrs M.R.), and one by Mr M.S. (code no. EC-21, in relation to Mrs Z.S.).

92. The eighth criminal report was filed by Mr S.S., in relation to abduction and disappearance of Mr V.S., and attempted abduction of Mr Z.S., in the vicinity of Dojnicë/Dojnica village.
93. Besides the description of the alleged abduction, all these criminal reports state the following (original text preserved):

“The disappearance of the above named person[s] has been reported on the same day to the members of the international forces - KFOR - and [its] officials ... probably made a note about it.

It has been completely impossible to the injured party ... to receive any information about the measures taken to find the kidnapped person[s] and about the perpetrators of this terrorist act, as well as information on the units and officers who were in charge of maintaining public peace and order and safety of the citizens on the territory of Prizren municipality. This information is available, through official channels, only to the body in charge of prosecution of the perpetrators of criminal acts, and it is possible to reconstruct a way of execution of this terrorist act and establish identities of perpetrators and their leaders. Also, through official channel, it is possible to obtain [relevant] information..., by hearing the commanders [of] the military units at the time when this criminal act was committed.”

94. Further in the file is a WCIU Case Analysis Report on the case no. 2005-00051, dated 3 October 2007. The field “Type of Crime” states “Abduction”; the date of the incident is stated as 12 June 1999; the number of total victims is one; the number of known witnesses is one; but no statements are reported as recorded and no known suspects. The field “Summary of the Crime” includes only the details on the abduction of Mr V.S., on 12 June 1999. The field “Brief Description of Evidence” states: “None”.

95. The field “Investigator Recommendation/Opinion” states the following:

“This case lacks evidence and only one witness is mentioned. No initial report is contained nor has a witness statement been taken by War Crimes. I feel the witness [Mr Z.S.] could be spoken to and this case closed if no further information has developed thru the witness.”

96. The last document in this part of the file is a WCIU Case Report for the case no. 2005-00051, generated from the WCIU database on 2 October 2007. The field labelled “Date In” reads “7/12/2005”. The field labelled “Summary” reads: “Reference is made to Serbian Claim document EC-18,19,20,21,22,24,26. A total of 17 villagers, all still missing, were taken away from their houses in the village of DOJNICE by a group of armed and uniformed KLA members and have never been seen again. Report to KFOR and ICRC has been submitted. Other evidence / facts is available upon request from the prosecutor.”

Cases nos 2005-00171 and 2007-00001

97. UNMIK also provided to the Panel electronic copies of the WCIU investigative files in relation to case nos. 2005-00171 and 2007-00001. Although some of the names of victims in those cases appeared to be similar to the names of some of the victims abducted from Dojnicë/Dojnice village, neither investigation is related to the present matter before the Panel.

3. Information from KFOR

98. As mentioned above, on 27 February 2015 the Panel requested KFOR to provide any information or archive materials related to the abduction and disappearance of the Serbian residents of Dojnicë/Dojnice village, in the view of the numerous reports about the involvement of KFOR in the immediate aftermath of the KLA attack.

99. However, on 13 March 2015, a KFOR Historian/Records Management Officer responded that no information whatsoever in relation to that event was found in the KFOR archives in Prishtinë/Priština or in the archives of the German KFOR contingent in Prizren.

4. Clarification of the Prizren BPPO and the SPRK

100. Upon the Panel's request, on 4 August 2014 the Prizren BPPO⁹ clarified that there was nothing in relation to any investigation into the abductions in Dojnicë/Dojnice village in July 1999, in their files, nor in the files of the Prizren Basic Court (former Prizren District Court), as at that time such investigations were "an exclusive competence of UNMIK."

101. Upon the Panel's further request, the SPRK clarified to the Panel that they did have a case in relation to the current matter registered under the no. PPP-069/09. According to the SPRK, on 28 November 2013 this investigation was referred to the Prizren BPPO; the translated investigative file was subsequently transferred to that BPPO on 1 December 2014. The SPRK also followed up with the Prizren BPPO and confirmed that the file is in the possession of that Prosecutor's Office.

102. On 2 July 2015, the Prizren BPPO clarified that on 24 March 2014 they received the files (nos PPP 069/09 and 2008-00188) referred to them by the SPRK, with a request to conduct an investigation. According to the BPPO, the file contained no collected evidence, but included only the names of missing persons and a brief description of the event. Subsequently, a case no. PPP/L.nr.13/2014 was opened by the BPPO (alleged crimes qualified as War Crimes and Kidnapping) and the Prizren Regional Police Serious Crimes Investigation was tasked to investigate the allegations. By the date that the letter was written, the BPPO had received no reply from the police and did not conduct any further action.

III. THE COMPLAINTS

⁹ The Prizren DPPO has later become the Prizren BPPO.

103. The complainants complain about UNMIK's alleged failure to properly investigate the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić, and abduction and killing of Mr Srećko Đekić. In this respect the Panel deems that the complainants invoke a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).

104. Insofar as their complaints have been declared admissible, the complainants also complain about the mental pain and suffering allegedly caused to themselves and their families by the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić. In this regard, they are deemed to 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

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

106. 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.

107. 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.

108. 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.
109. 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 § 107). 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.
110. 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

111. The complainants in substance allege violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić, and abduction and killing of Mr Srećko Đekić. The complainants further allege that they were not properly informed as to whether an investigation was conducted and what the outcome was.
112. In relation to all complaints, the SRSG notes at the outset, that, although the dates of disappearances of the complainants’ relatives differ (12 to 27 June 1999), it seems that all the villagers of Dojnice [22 individuals] disappeared around the same time. Thus, the SRSG also submits that the alleged abduction and disappearance of the five victims in this case and more than 15 other residents of the same village were investigated as a single case.

113. Further, the SRSB accepts that disappearances of Mrs Draga Đekić, Mr Srećko Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić can be considered to have occurred in life-threatening circumstances. Therefore, UNMIK does not dispute its responsibility to investigate the incidents, under Article 2 of the ECHR, procedural part. The SRSB, however, stresses that the victims disappeared “at the chaotic time of the Kosovo conflict.”

114. The SRSB underlines that “in June 1999, the security situation in post-conflict Kosovo remained tense. KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.” Citing the UN Secretary-General’s report to the United Nations Security Council in July 1999, the SRSB describes the situation as follows:

“The general situation in Kosovo has been tense but is stabilizing. The KLA has rapidly moved back into all parts of Kosovo, in particular the south-west, and a large number of Kosovo Serbs have left their homes for Serbia. While the first wave of Kosovo Serb departures was prompted by security concerns rather than by actual threats, a second wave of departures resulted from an increasing number of incidents committed by Kosovo Albanians against Kosovo Serbs. In particular, high profile killings and abductions, as well as looting, arsons and forced expropriation of apartments, have prompted departures. This process has now slowed down, but such cities as Prizren and Pec are practically deserted by Kosovo Serbs, and the towns of Mitrovica and Orahovac are divided along ethnic lines.

The security problem in Kosovo is largely a result of the absence of law and order institutions and agencies. Many crimes and injustices cannot be properly pursued. Criminal gangs competing for control over scarce resources are already exploiting this void. While KFOR is currently responsible for maintaining public safety and civil law and order, its ability to do so is limited due to the fact that it is still in the process of building up its forces. The absence of a legitimate police force, both international and local, is deeply felt, and therefore will have to be addressed as a matter of priority.”

115. In the SRSB’s words, “the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”

116. In this regard, the SRSB stresses that this responsibility stems from the procedural obligation under Article 2 of the ECHR to conduct an effective investigation where death occurs in suspicious circumstances not imputable to State agents. The SRSB states that the procedural element of Article 2 is essentially two-fold: (i) an obligation to determine through investigation the fate and/or whereabouts of the missing person; and (ii) an obligation to conduct an investigation capable of determining whether the death was caused

unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person.

117. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources. Furthermore, after a long and brutal war, Bosnia and Herzegovina underwent fundamental overhaul of its internal structure and political system. ... New institutions had to be created and the existing ones had to be restructured. Some reluctance on the part of the former warring parties to work with those new institutions could be expected in the post-war period, as evidenced in the present case. While it is difficult to pinpoint when exactly this process ended, the Court considers that the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005, following comprehensive vetting of the appointment of police and judiciary and the establishment of the War Crimes Sections within the Court of Bosnia and Herzegovina. All this considered and since there has been no substantial period of inactivity post-2005 on the part of the domestic authorities in the present case, the Court concludes that, in the circumstances obtaining at the material time, the domestic criminal investigation can be considered to have been conducted with reasonable promptness and expedition.”

118. In the view of the SRSG, UNMIK faced a very similar situation in Kosovo from 1999 to 2008 as that in Bosnia and Herzegovina from 1995.

119. The SRSG continues that “[i]n the Kosovo conflict thousands of people went missing. The OMPF estimated the number of missing at 5,602 in 2002. By August 2008, the OMPF reported that the total number of missing as amounting to 1,938.” Many of the persons who went missing were abducted, killed, and buried in unmarked graves inside or outside Kosovo, which made it very difficult locating and recovering their mortal remains.

120. The SRSG states that in June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing. However its work was faced with many challenges at the beginning of the operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries

operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština.

121. The SRSB continues in this regard that: “Even more serious than the shortfall of the forensic standards was the lack of attention paid to the humanitarian agenda of identifying bodies and restituting their remains [...]. In a focused effort to demonstrate that crimes were systematic and widespread, ICTY and its gratis teams autopsied as many bodies as possible with little or no identification work. ICTY reports that it exhumed 4019 bodies in 1999 and 2000, less than half of which were identified; furthermore, some of the unidentified bodies exhumed in 1999 by gratis teams were reburied in locations still unknown to OMPF.” After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “ex-officio, without any broader prosecutorial strategy”. As a consequence, “a large amount of unstructured information was collected”.
122. The SRSB states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is “testament to the vigour of its work between 2002-2008” and that “more bodies continued to be located in burial sites and more identifications and returns to family members are taking place, often based on information contained in UNMIK-OMPF files.”
123. The SRSB continues that “therefore, it is apparent that the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one” in Kosovo as reflected in the *Palić* case referred to above. The SRSB further notes that this process was “reliant on a number of actors other than UNMIK, for example the [ICMP], the [ICRC] and local missing persons’ organisations.”
124. The SRSB further argues that fundamental to conducting effective investigations is a professional, well trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new KPS from scratch, a long and challenging task, which, according to the SRSB, is still in progress. The SRSB also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

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

imperative for UNMIK Police to establish order and to quickly construct a framework to register and investigate crimes.

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

125. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local KPS officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to crimes. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and culture, with limited support from the still developing KPS.
126. He underlines that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints “inhibited the ability of an institution such as UNMIK Police” to conduct all investigations in a manner that may be demonstrated or at least expected in other States with more established institutions, which don’t have to deal with the surge in cases of such a nature associated with a post-conflict situation.
127. With regard to this particular case, the SRSG asserts that UNMIK became aware of the disappearance of the complainants’ relatives some time between 2000 and 2003; in particular, “[i]n respect of Ms. Draga Đekić and Ms. Vasiljka Nikolić, the UNMIK OMPF and MPU became aware of their disappearance in 2002 and in respect to Mr. Srećko Đekić, it can be asserted that the UNMIK OMPF and MPU became aware of his disappearance in 2003.” Despite contacts with the families, OMPF and MPU were not able to obtain any information that would help locate the disappeared persons. Furthermore, according to the SRSG, “based on the available documents, it may not be concluded beyond any reasonable doubt whether Ms. Draga Đukić, Ms. Vasiljka Nikolić, Mr. Jevta Spasić and Ms. Bosiljka Spasić are still alive or not.”
128. The SRSG further refers to above-mentioned situation when an UNMIK IPP received a number of documents from the Serbian authorities, which he forwarded to the CCIU, requesting an investigation (see §§ 86 - 89 above). However, the information received was assessed as vague and lacking sources to support the allegations; many facts were already known well to the police so these documents did not “add any important information”. Therefore, the SRSG considered that these files did not assist in bringing perpetrator(s) to justice.

129. The SRSG also recalls the MPU's unsuccessful first attempt to locate the gravesite of Mr Srećko Đekić in September – November 2004 (see §§ 60 - 61 above), as an example of prompt and thorough action by UNMIK authorities. He likewise refers to the OMPF action in collecting information on the abduction of the residents of Dojnicë/Dojnice, on 27 June 1999, as well as the location, exhumation and identification of the mortal remains of Mr Srećko Đekić (see §§ 68 - 75 above).

130. In conclusion, the SRSG states that “[i]t is almost impossible to find the truth and a perpetrator of any crime without any evidence. In the current case the main impediment in investigation was lack of witness or evidence. Among hundreds of pages of investigation on these cases, it can be understood that the police and the investigators examined all tracks and possible evidence, yet no progress was made. ... All evidence and leads ... were thoroughly examined; yet they could not assist to identify any perpetrator. Considering no other evidence was available; investigation further to identify and to bring perpetrators to justice was not possible.”

131. Thus, in the SRSG's view, there was no violation of the procedural requirements of Article 2 of the ECHR by UNMIK in relation to any of the complaints in the present case.

3. The Panel's assessment

132. 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 authorities did not conduct an effective investigation into the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić, and abduction and killing of Mr Srećko Đekić.

a) Submission of relevant files

133. At the Panel's requests, the SRSG provided copies of the documents related to the investigations subject of the present complaints, which UNMIK was able to recover. While presenting these files to the Panel, the SRSG noted: “it seems that parts of the files have been missed or have been dislocated”. Later a file in relation to the case no 235/09 was received from the UN Archives in New York (see §§ 16 and 17 above), but provided no new documents to the file already in the Panel's possession. On 26 August 2015, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 29).

134. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaints. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005, § 56).

135. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigation to their handing over, is crucial to the continuation of such investigations and could thus raise *per se* issues under Article 2 (see Human Rights Advisory Panel [HRAP], *Bulatović*, no. 166/09, opinion of 13 November 2014, § 62).

136. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files, but 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*

137. 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.

138. In order to address the complainants’ allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation

arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).

139. 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 § 110 above, at § 136; ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
140. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310; see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210; ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).
141. Setting out the standards of an effective investigation, the Court has stated that besides being independent, accessible to the victim's family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312; and *Isayeva v. Russia*, cited above, at § 212).
142. At the same time, the Court considers that not every investigation should necessarily be successful nor come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, possibly, the punishment of those responsible (see ECtHR, *Mahmut Kaya v. Turkey*, no. 22535/93, judgment of 28 March 2000, § 124, ECHR 2000-III; see also ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 71, ECHR 2002-II).
143. 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 § 138 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see ECtHR [GC], *El-Masri v. "the former Yugoslav Republic of Macedonia"*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 139 above, at § 322).

144. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, cited above, § 72; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 139 above, at § 323). Furthermore, in the Court's view, the State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice and that requires a prompt examination of the case without unnecessary delays (see ECtHR [GC], *Šilih v. Slovenia*, no. 71463/01, judgment of 9 April 2009, § 195; ECtHR, *Byrzykowski v. Poland*, no. 11562/05, judgment of 27 June 2006, §§ 86 and 94 - 118).
145. Specifically with regard to persons disappeared and later found dead, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that "the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature" (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 136 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 above, at § 148, *Aslakhanova and Others v. Russia*, nos 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation "does not come to an end even on discovery of the body This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain" (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 above, at § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 141 above, at § 64).
146. 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 § 140 above, at §§ 311-314; ECtHR, *Isayeva v. Russia*, cited in § 140 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 139 above, at § 324).

147. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri*, cited in § 142 above, at § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons ... it also implies the right to know the fate and whereabouts of the victim” (Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also HRC, *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives, UN Document A/HRC/22/52, 1 March 2013, § 23-26).

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

148. The Panel is conscious of the fact that the into the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić, and abduction and killing of Mr Srećko Đekić took place shortly after the deployment of UNMIK in Kosovo, when crime, violence and insecurity were rife.

149. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2 (see § 113 above). However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK’s deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.

150. 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.

151. 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).
152. 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 § 141 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 § 146 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 § 140 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 140 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
153. 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" (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 § 138 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, *Hashiyev and Akayeva v. Russia*, nos 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited in § 140 above, at §§ 215-224; ECtHR, *Musayev and Others v. Russia*, nos 57941/00 and others, judgment of 26 July 2007, §§ 158-165).

154. 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 § 137 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK's obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
155. 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 § 39 above).
156. In response to the SRSG's objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 141 above, at § 70; *Brecknell v. The United Kingdom*, no. 32457/04, judgment of 27 November 2007, § 62).
157. However, the Panel considers that, in the context of most serious crimes committed against civilian populations, Article 2 requires that the authorities take all investigative efforts in order to establish the facts and bring perpetrators to justice. Such cases shall be given the highest priority.

158. 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.
159. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel's jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight; failure to provide family members with minimum necessary information on the status of the investigation (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 145 above, at § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover between the investigators and/or investigative units. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK's failures, which persisted throughout the period of the Panel's jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.

d) *Compliance with Article 2 in the present case*

160. Turning to the circumstances of the present case, the Panel recalls that the victims in this case were abducted and disappeared, or were killed, in June 1999, shortly after the deployment of UNMIK in Kosovo. The Panel is conscious of the fact that Mr Srećko Đekić was not abducted with the other residents of Dojnicë/Dojnica village, on 27 June 1999, but was killed in the village a few days after the attack, when he returned to the village (see §§ 64 and 72 above). However, as his killing was investigated by UNMIK authorities in a joined case, the Panel will also not separate his case from the others' and consider them together.
161. The Panel further notes that, according to the 2000 Annual Report of UNMIK Police, by 27 October 1999, the complete executive policing powers in the field of law enforcement in Prizren region, including the system of criminal investigation, were transferred from KFOR to UNMIK Police. The Panel also recalls that in October 2001, UNMIK was made aware of the disappearances of all victims, by the ICRC (see § 50 above). Individual investigations with regard to the disappeared victims were initiated by UNMIK Police as follows: for Mr Jefta Spasić and Mrs Bosiljka Spasić in 2000, for Mrs Draga Đekić and Mrs Vasiljka

Nikolić in 2002, and for Mr Srećko Đekić in 2003 (see §§ 60 and 62 above). A joint investigation in relation to all (case no. 0283/INV/04) of them was opened by the by the MPU in 2004 (see § 60 above).

162. The purpose of this investigation was to discover the truth about the circumstances of the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić, and Mrs Bosiljka Spasić, as well as the abduction and killing of Mr Srećko Đekić, to establish the fate of those still missing, to find the perpetrators and bring them before a competent court established by law. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve all necessary evidence leading to identification of the perpetrator(s).
163. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim's family. The investigation's conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation's effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 141 - 142 above).
164. Therefore, it was UNMIK's responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
165. The Panel notes in this respect UNMIK's inability to guarantee that the investigative file presented to the Panel is complete (see § 133 above), and the lack of further explanation in relation to this. Furthermore, the Panel recalls that, upon Panel's request, a part of the investigative file was found in the archives at the UN Headquarters in New York and returned to UNMIK (see §§ 16 and 17 above), although these documents did not present any new facts.
166. In case the file presented to the Panel is incomplete, it would indicate that one of the following situations may have occurred: no proper investigation was carried out; the file was not accurately and fully handed over to EULEX; or UNMIK failed to retrieve the complete file from the current custodian.
167. The Panel has already noted above that it has no reason to doubt UNMIK's good faith in seeking to provide the complete investigative file for its review (see § 136 above). However, the Panel is concerned that UNMIK was not able to confirm whether the investigative file, which was provided to the Panel, is complete. In the Panel's view, whichever of these

potential explanations is applicable, it indicates a failure, which is directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity. The Panel further considers this to be particularly indicative of a possible general failure to comply with the obligation to ensure the proper handover and tracking of the investigative material.

168. The Panel notes that there were obvious shortcomings in the conduct of the investigation into the events in Dojnicë/Dojnice village from its inception. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 110 above), it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 141 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 § 42 above).
169. The Panel now turns to the assessment of this particular investigation against the first part of the procedural obligation under Article 2 of the ECHR, which is establishing the fate of the victims.
170. The Panel is mindful that in any investigation, and particularly in an investigation of a disappearance in life-threatening circumstances, the initial stage is of the utmost importance, and it serves two main purposes: to identify the direction of the investigation and ensure preservation and collection of evidence for future possible court proceedings (see the Panel's position on a similar matter expressed in the case X., nos. 326/09 and others, opinion of 6 June 2013, § 81; HRAP, *Ibraj*, case nos. 14/09 et al, opinion of 6 August 2014, § 142).
171. The Panel notes that, in 2000 – 2003, UNMIK Police opened individual investigations with regard to all the victims abducted from Dojnicë/Dojnice village, on 27 June 1999; in addition, a joint investigation was opened by the MPU, in 2004. The file also shows that the necessary ante-mortem information for Mr Jefta Spasić, Mrs Bosiljka Spasić, Mrs Draga Đekić and Mr Srećko Đekić was collected.
172. The Panel notes with concern that the file in its possession does not contain a Victim Identification Form with ante-mortem data for Mrs Vasiljka Nikolić, which is normally present in investigative files related to missing persons. Nevertheless, the Panel is satisfied that sufficient samples for DNA identification were collected by the ICRC, which is also confirmed by the ICMP online database (see § 51 above). In this respect, the Panel considers that the collection of the DNA samples is of itself an essential action that secures the necessary material for any future comparative examination and possible identification of located mortal remains (see HRAP, *Pejčinović*, no. 89/09, opinion of 13 March 2014, § 161).
173. With respect to the part of the investigation related to Mr Srećko Đekić, the Panel considers that the responsibility to establish the fate of a missing person under the procedural obligation of Article 2 of the ECHR ends with the positive identification of mortal remains. Thus, this part of UNMIK's obligation in relation to Mr Srećko Đekić was discharged, while

it was not in relation to Mr Jefta Spasić, Mrs Bosiljka Spasić, Mrs Draga Đekić and Mrs Vasiljka Nikolić, whose fate is still to be established.

174. At the same time, from the moment the mortal remains are identified, the investigative authority receives additional information related to the identified mortal remains (probable time and cause of death, the place where the mortal remains were found, the items found with them etc.). It is for the authorities to properly utilise this information for construction of new or correction of the previously formed investigative versions, in order to further direct the investigation towards establishing the truth as to the circumstances leading to an individual's death. Thus, in the Panel's opinion, the assessment of the post-identification investigative action contributes towards the overall assessment of the effectiveness of the investigation.
175. Therefore, the Panel will now turn to the investigation carried out by UNMIK Police with the aim of identification of perpetrators and bringing them to justice, that is the other element of the procedural obligation under Article 2 of the ECHR, in relation to all five victims in this case.
176. It has already been mentioned that in this case the individual investigations into the killing, abductions and disappearances of the complainants' close relatives were initiated by UNMIK Police on various dates in 2000 – 2003, the first one being opened at least a year after the KLA attack on Dojnicë/Dojnice. The collection of ante-mortem details for the victims was undertaken by the ICRC. The action of UNMIK Police in the initial periods after opening the cases consisted only of registering the files and entering the relevant data into their database.
177. The joint investigation by the MPU (case no. 0283/INV/04), related to the KLA attack on the village and all of the persons who were disappeared as a result of that attack, was opened by the MPU in 2004 (see § 60 above). However, after a failed attempt to locate the grave site, the file was left pending, without any further action.
178. The Panel notes that, as in the other cases of disappearances that took place during the summer of 1999, there could be little doubt from the outset that the residents of the Dojnicë/Dojnice village had been taken away by the KLA. Nevertheless, no immediate action by UNMIK authorities whatsoever, except for probably making an initial assessment of the information and registering the cases, is reflected in the respective investigative files.
179. The Panel may accept that UNMIK Police received information about the attack on Dojnicë/Dojnice village after a delay of a year or more. However, this does not explain the total absence of any substantive investigation into this matter. Although, as the Panel has already noted above, there were numerous indications of involvement of KFOR in the aftermath of the attack of 27 June 1999 (see §§ 64, 68, 80, 81, 93 and 96 above), there is nothing in the file to show that UNMIK Police ever approached KFOR to obtain additional information, including on the KFOR action.

180. The Panel notes that in 2001, upon receipt of the ICRC Victim Identification Forms, UNMIK Police was in possession of information of a mass abduction of Dojnicë/Dojnice residents on 27 June 1999, as well as the names and contact details of the complainants and other potential witnesses in Serbia proper (see §§ 76, 78, 81 and 82 above). However, there is no indication in the file that the UNMIK Police contacted, or made any effort to contact, the complainants.
181. The MPU investigation no. 0283/INV/04, conducted in 2004 (see §§ 60 - 63 above), appears to have been aimed only at the location of the mortal remains of the missing persons. However, even this investigation stalled because an MPU “source” could not point to any gravesite location. The file clearly shows that the MPU was aware of the information publicly available on the HLC webpage (see § 60 above), which provided information on the attack and on the possible witnesses. Although the HLC appears to have reached and interviewed the survivor witnesses, Srećko Djekić, N.B. and S.M., B.D., D.S. and A., there is no record of any of them being approached and interviewed by UNMIK Police.
182. Moreover, N.B., the surviving eye-witness who possessed crucial first-hand information, had died (see § 68 above), without having his statement officially documented in a form acceptable for any further criminal proceedings. Such failures cannot be rectified at later stages and they seriously undermine the prospects of any investigation.
183. The same source contains information, given by witness D.S., about two suspects, E.R. and R.S., local KLA commanders (see § 64 above). Nevertheless, there are no indications in the file that this information was followed up by UNMIK Police. Instead, the case was simply left “inactive”.
184. The Panel further notes that no other basic investigative steps were undertaken by the UNMIK Police. In particular, the file contains no record of a police visit to the scene, at least to confirm whether or not the village was in fact burned, as well as to try to better understand the circumstances of the alleged KLA attack. UNMIK Police likewise never visited the neighbouring village, Skorobishtë/Skorobište to try to find and interview possible witnesses.
185. The file also indicates that in 2002 an UNMIK international prosecutor received from the Serbian CCKM extensive information in relation to crimes committed in Kosovo during and after the armed conflict (see §§ 86 - 89 above). This information included lists of persons involved in the commission of murders, abductions and other crimes against Kosovo Serbian “and other non-Albanian population” in Kosovo. As mentioned above, the list, which was presented to the Panel, mentions suspects in the crimes committed against Mrs Draga Đekić, Mr Srećko Đekić and Mr V.S; it further names many former KLA members who operated in Prizren area and provides other relevant information (see § 87 above). However, those lists were apparently used only as a source of intelligence information with no follow up on the indicated links to this case appearing in the file.
186. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after that critical date the serious shortcomings of the initial stage of the individual and joint

investigations persisted. Accordingly, inadequacies existing up until that date were not addressed. Thus, in accordance with the continuous obligation to investigate (see § 145 above), the assessment of the whole investigation is brought within the period of the Panel's jurisdiction.

187. As the perpetrators had not been identified, UNMIK Police was obliged to use the means at their disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and that any new evidence had been considered, as well as to inform their relatives regarding the progress of this investigation.

188. The Panel recalls that by May 2005, at least eight criminal reports were filed by the relatives of the missing people of Dojnicë/Dojnice village and that the UNMIK DOJ was in receipt of those reports. These included the reports filed by the complainants in this case before the Panel, Mrs Budimirka Mirić, Mr Dimitrije Spasić and Mrs Liljana Stojković. These reports provided a detailed description of the circumstances of the abduction of their relatives and the names the abducted persons (see §§ 90 - 93 above).

189. It appears from the file that these reports were forwarded to the UNMIK Police WCIU, which based on them, on "7/12/2005" opened an investigation, the case no. 2005-00051 (see § 96 above). The summary of the relevant information provided in the available WCIU Case Report mentions seven criminal reports in relation to the mass abduction of elderly Serbian residents of Dojnicë/Dojnice village, on 27 June 1999, and one further criminal report (see § 91 above). No substantive action on these criminal reports is registered in the file.

190. The Panel further recalls that in 2005 the OMPF was able to find an informant, who described to them the circumstances of Mr Srećko Đekić's death, and was able to point out the location of his grave (see § 72 above). In 2006, the mortal remains of Mr Srećko Đekić were exhumed, identified and handed over to his family. As mentioned above, the Panel does consider this as a successful aspect of the investigation aimed at establishing the fate of a missing person.

191. The same informant provided a detailed description of the KLA attack on Dojnicë/Dojnice village and named a certain "KPS officer in Prizren police station", who organised that attack (see § 70 above). However, the file likewise reflects no attempt from UNMIK Police to follow up on this information.

192. The Panel further notes that this informant refused to testify openly due to the danger to himself and his family (see § 70 above). The Panel is aware of a frequently reported problem in Kosovo related to the lack of protection of witnesses from threats or intimidation, "which has been, and remains, one of the greatest challenges for justice authorities"¹⁰. Some observers note that the "[w]itnesses, who in many cases are crucial to linking defendants to the crimes for which they are accused, are becoming more reluctant to testify before

¹⁰ See: *Witness Security and Protection in Kosovo: Assessment and Recommendations*, a report by the OSCE Mission in Kosovo and the US State Department, November 2007, p. 5 // EULEX official website [electronic source]: http://www.eulex-kosovo.eu/training/justice/docs/OSCE-USoffice_witness-Security_and_Protection.pdf - accessed on 24 June 2014.

institutions, be it police, prosecutors and/or judges in courts. However, there is no indication in the file as to any action undertaken by UNMIK authorities to secure his testimony for any future criminal proceedings.

193. The Panel further recalls that Mr Srećko Đekić's mortal remains showed clear signs of violent death (a gunshot wound to the chest), showing that he had been killed. In addition, bullets were found with his mortal remains. However, no ballistic examination of those bullets was ordered and no other investigative action appears to have taken place. Also, a recommendation to search "[t]he terrain along stream bank ... for human remains as possible material for identification of the victims" (see § 71 above) likewise does not appear to have been implemented.
194. The joint case initiated after the receipt of the eight criminal reports in May 2005 (case no. 2005-00051, see §§ 90 - 96 above) was apparently reviewed once, in October 2007, by the WCIU, but the investigator did not review that part of the file related to the mass abduction on 27 June 1999. That case review indicates that there was no evidence collected by that time, although one witness was named (Mr Z.S., see §§ 92 and 95 above). In the end, the investigator recommended interviewing this witness, and a decision on the future of the investigation was to be taken after that interview. However, there is no further action recorded in the file. Thus, in the Panel's view, the review of this investigative file was not adequate.
195. The Panel notes that, despite the magnitude of the alleged crime, the availability of the names of the victims and witnesses (including survivor eye-witnesses), the information about suspects and the location of the mortal remains of one victim, the investigation never progressed. The investigative file in the Panel's possession does not indicate any reasons for this, nor did UNMIK present any plausible explanation.
196. As mentioned above, in December 2008, UNMIK competencies in the field of police and justice were transferred to EULEX. Subsequently, all files held by the UNMIK DOJ and UNMIK Police were transferred to EULEX police and judicial components (see §§ 42 - 43 above). However, as the Panel has established, no substantive investigation into the mass abduction of the Serbian residents of Dojnicë/Dojnica has been likewise conducted either by EULEX or by the local authorities (see §§ 100 - 102 above).
197. The Panel recalls the SRSG's arguments that "[i]t is almost impossible to find the truth and a perpetrator of any crime without any evidence. In the current case the main impediment in investigation was lack of witness or evidence. Among hundreds of pages of investigation on these cases, it can be understood that the police and the investigators examined all tracks and possible evidence, yet no progress was made. ... All evidence and leads ... were thoroughly examined ... Considering no other evidence was available; investigation further to identify and to bring perpetrators to justice was not possible" (see § 130 above).
198. In this regard, the Panel notes, first, that information is crucial to any investigation, regardless of a crime being investigated. Second, any investigation at its initial stage lacks at least some information. Finding the necessary information to fill those gaps is the main goal

of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. In this case, however, it appears that, instead of actively searching for information and leads, UNMIK authorities only waited for further information to appear by itself. In this situation it may have led to the loss of potential evidence (see e.g. HRAP, *P.S.*, no. 48/09, opinion of 31 October 2013, § 107; *Stevanović*, no. 289/09, opinion of 14 December 2014, § 111; *Jelić*, no. 288/09, opinion of 13 May 2015, § 106).

199. The Panel agrees with the SRSG that the investigative file consists of “hundreds of pages”. However, almost none of them reflect any actual investigation directed at finding the persons who organised and accomplished this mass abduction. Recalling the obvious significant gaps in the investigation identified above, the Panel does not understand how, according to the SRSG, “the investigators examined all tracks and possible evidence” in this case.
200. Thus, in the Panel’s view, the UNMIK investigative authorities failed to undertake all reasonable steps to follow obvious lines of enquiry and secure the evidence related to the victims’ disappearance and killing, contrary to the procedural requirements of Article 2 of the ECHR.
201. The Panel is conscious of the fact that not all crimes can be solved and not all investigations lead to identification and successful prosecution of the perpetrator[s]. In this respect, the Panel has already referred above to the position of the European Court with regard to the nature of the procedural obligation under Article 2, which is “not an obligation of results but of means.” The Court clearly states that no violation of Article 2 exists if the authorities take all reasonable steps they can to secure the evidence concerning an incident and the investigation’s conclusion is based on thorough, objective and impartial analysis of all relevant elements (see §§ 141 - 142 above), even when no perpetrators are convicted (see e.g. ECtHR case *Palić*, cited in § 141 above, at § 65 or ECtHR [GC], *Giuliani and Gaggio v. Italy*, no 23458/02, judgment of 24 March 2011, §§ 301 and 326).
202. 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. Having regard to all the circumstances of this particular case, the Panel considers that not all adequate steps were taken by UNMIK towards identifying the perpetrators and bringing them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 141 above), as required by Article 2 of the ECHR.
203. In the SRSG’s own words (see § 124 above), it was imperative for UNMIK Police to establish order and to quickly construct a framework to register and investigate crimes. The Panel agrees with the SRSG. However, despite the variety of information available to UNMIK authorities in this case, no reasonable investigation was conducted. To the Panel this indicates that this obligation is not fulfilled simply by the establishment of an adequate framework, but only when the framework becomes a properly coordinated system capable

of carrying out an adequate and effective investigation in accordance with Article 2 of the ECHR (see e.g. HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 164).

204. The Panel has already concluded that no substantive effort was made by UNMIK investigative authorities to investigate in a systematic and coordinated manner the disappearance of up to 20 persons from Mushtisht/Mušutište, in June 1999, during a concerted KLA action, which appears to the Panel to be an operation of ethnic cleansing (see HRAP, *Mitić and others*, 63/09 and others, opinion of 14 March 2014, § 172). The Panel also notes that this failure continued during the period under review as, by this time, no system seems to have been put in place by the UNMIK Police to establish effective coordination among its different units and to avoid overlap. In this respect, the Panel also notes that no effort was made by UNMIK Police to follow an obvious line of enquiry leading to the KLA group controlling Dojnicë/Dojnice and nearby villages, which in the statements of the witnesses had been implicated in crimes against the civilian inhabitants of the area.
205. The Panel also puts on record that this is not the first time it sees failure to investigate large-scale abductions of Kosovo Serbian residents in the Prizren region of Kosovo, particularly targeting elderly people as some of the most vulnerable people (see HRAP, no. 63/09 et al, *Mitić et al*, mentioned above, §§ 172-173).
206. The apparent lack of an immediate and cohesive reaction from UNMIK 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. Certainly, in the Panel's view, such inaction did not help UNMIK to defuse the "[t]empers and tensions ... running high amongst all ethnic groups, exacerbated by reports of missing and dead persons", mentioned by the SRSG (see § 124 above).
207. The Panel also fears that such inaction indicates certain reluctance on the part of UNMIK Police to pursue the investigations when there were indications of ethnically motivated violence pointing towards persons associated with the KLA (see HRAP, *Janković*, no. 249/09, opinion of 16 October 2014, § 108; HRAP, *Nikolić et al*, nos 72/09 et al, opinion of 14 December 2014, § 203).
208. In relation to the procedural requirement of public scrutiny, the Panel recalls that Article 2 also entails that the victim's next-of-kin be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
209. However, the file does not show any contact between UNMIK Police and judicial authorities with the complainants and their families; none of them have been interviewed. As mentioned above, in 2007, the mortal remains of Mr Srećko Đekić were handed over to his sister, Mrs Budimirka Mirić, a complainant in this case and one of those who had submitted criminal

reports to UNMIK IPPs (see § 91 above). Although UNMIK was clearly aware of her whereabouts and contact details even at earlier stages (see §§ 66, 75 and 76 above), she was also never interviewed. Furthermore, in their criminal reports to IPPs, the complainants expressed their dissatisfaction with the accessibility of the investigations to the families (see § 90 above).

210. Therefore, the Panel concludes that UNMIK failed to ensure that the complainants and their families were involved in the investigative process to the extent necessary to safeguard their legitimate interests. Thus, the Panel considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR (see, *a contrario*, ECtHR [GC], *Mustafa Tunç and Fecire Tunç v. Turkey*, no. 24014/05, judgment of 14 April 2015, §§ 210 - 216).

211. In light of the shortcomings and deficiencies in the investigation described above, the Panel considers that the case of Mrs Draga Đekić, Mr Srećko Đekić, Mr Jevta Spasić, Mrs Bosiljka Spasić and Mrs Vasiljka Nikolić, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo (see § 159 above; compare with HRC, *Abubakar Amirov and Aizan Amirova v. Russian Federation*, cited in § 154 above, at § 11.4, and ECtHR, *Aslakhanova and Others v. Russia*, cited in § 145 above § 123; HRAP, *Bulatović*, no 275/09, opinion of 22 April 2015 §§ 85 and 101).

212. Therefore, the Panel concludes that UNMIK failed to carry out an effective investigation into abduction and disappearance of Mrs Draga Đekić, Mr Jevta Spasić, Mrs Bosiljka Spasić, Mrs Vasiljka Nikolić, as well as the abduction and killing of Mr Srećko Đekić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.

B. Alleged violation of Article 3 of the ECHR

213. The Panel considers that the complainants also invoke a violation of their right to be free from inhumane or degrading treatment arising out of the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić, as guaranteed by Article 3 of the ECHR. In this regard, they are deemed to rely on Article 3 of the ECHR.

1. The scope of the Panel's review

214. 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 §§ 107 - 110 above).

215. 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 § 153 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 141 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).

216. 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

217. The complainants allege that the lack of information and certainty surrounding the abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić, particularly because of UNMIK’s failure to properly investigate it, caused mental suffering to themselves and their family.

218. Commenting on this part of the complaint, the SRSG accepts that situations of relatives of disappeared and missing persons “may disclose inhumane and degrading treatment contrary to Article 3, ECHR”, which lies in the authorities’ reactions and attitudes to the situation when it was brought to their attention.

219. The SRSG stresses that the complainants do not allege “any bad faith on the part of UNMIK personnel involved with the matter, nor of any attitude by UNMIK that would have evidenced any disregard for the seriousness of the matter or the emotions of the complainants and of their families in relations with the disappearance of [their relatives].” The SRSG also points out that none of the complainants had witnessed the disappearances, nor were they in close proximity to the location at the time it occurred.

220. In this context, the SRSG stresses that “the understandable and apparent mental anguish and suffering of the Complainants based on the disappearance and death of his relative cannot be attributed to UNMIK, but is rather a result of the inherent suffering caused by the disappearance and probably death of a close family member.” Furthermore, as the suffering of Mrs Budimirka Mirić, Mrs Ljiljana Stojković and Mr Dimitrije Spasić and their families was not “distinct from the emotional distress ... inevitably caused to relatives of a victim of a serious human rights violation.”

221. Therefore, in the SRSG’s view, UNMIK cannot be held responsible for a violation of Article 3 of the ECHR in this case.

3. The Panel’s assessment

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

222. 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.
223. 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 § 137 above, at § 150).
224. 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.
225. 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).
226. 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 § 215 above, at § 94).

227. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey*, cited above, § 96; ECtHR, *Osmanoğlu v. Turkey*, no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine*, no. 28005/08, judgment of 14 March 2013, § 201).
228. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya*, Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v. Algeria*, views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; *Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the case *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife’s mutilated remains (...), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have led 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, *Amirov*, cited in § 154 above, at § 11.7).
229. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts; on the contrary, in the Court’s view, an assessment of the way in which the authorities of the respondent State reacted to the

applicants' enquiries should be global and continuous (see ECtHR, *Açış v. Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).

230. 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 § 226 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 216 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 153 above, at § 140).

231. 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 applicants' mental distress caused by the commission of the crime itself.

232. 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

233. 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 §§ 148 - 158 above).

234. 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 § 39 above).

235. 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.

236. 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

237. 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.

238. The Panel notes the proximity of the family ties between the complainants and their missing relatives, as Mrs Draga Đekić is the mother of Mrs Budimirka Mirić, Mrs Vasiljka Nikolić is the mother of Mrs Ljiljana Stojković, and Mrs Bosiljka Spasić and Mr Jevta Spasić are the parents of Mr Dimitrije Spasić.

239. The Panel recalls the failure established above in relation to the procedural obligation under Article 2. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK's reactions and attitudes to the complainants in their entirety.

240. The complainants claim that they have never been contacted by any UNMIK authority in relation to the investigation into their relatives' abduction and disappearance. Indeed, the file has no documents suggesting that such contact(s) ever took place, which is also not disputed by the SRSG. Furthermore, as mentioned above, in their complaint to the IPP at the Prizren DPPO, the complainants, as well as the others who reported the same crimes, expressed their dissatisfaction with the complete absence of information from UNMIK about any investigation in this regard. The complainants even proposed a course of action to the IPP to collect evidence (see §§ 90 - 93).

241. The only recorded contact between one of the complainants, Mrs Budimirka Mirić, and UNMIK authorities was in October 2006, when she received the mortal remains of her brother, Mr Srećko Đekić, but her statement was never recorded (see § 209 above). The Panel recalls its finding above, in relation to Article 2 of the ECHR, that UNMIK authorities failed to ensure that the all complainants in this case and their families, were involved in the investigative process to the extent necessary to safeguard their legitimate interests (see § 210).

242. 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 the fate of their close relatives and the status of the investigation.

243. In view of the above, the Panel concludes that the complainants and their families have suffered severe distress and anguish for a prolonged period of time, a big part of which falls within the Panel's temporary jurisdiction, 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 Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mrs Bosiljka Spasić and Mr Jevta Spasić. Thus, in the Panel's view, it is obvious that the pain, which was inflicted on the complainants and their families, who had to live in uncertainty about the fate of their close relatives, must have been unbearable.

244. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the distress and mental suffering of the complainants and their families, in violation of Article 3 of the ECHR.

V. CONCLUDING COMMENTS AND RECOMMENDATIONS

245. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.

246. The Panel notes that enforced disappearances, torture and inhumane and degrading treatment constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for killings, abductions and/or disappearances in life-threatening circumstances. Its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.

247. 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.

248. 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 § 42 above), UNMIK's responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.

249. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

- In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, cited in § 222 above, at § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109),

must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding abduction and disappearance of Mrs Draga Đekić, Mrs Vasiljka Nikolić, Mrs Bosiljka Spasić and Mr Jevta Spasić and abduction and killing of Mr Srećko Đekić, will be established and that the possible perpetrators will be brought to justice. The complainants and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;

- Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK's failure to adequately investigate the above mentioned cases, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainants and their families in this regard;
- Takes appropriate steps towards payment of adequate compensation to the complainants for the moral damage suffered due to UNMIK's failure to conduct an effective investigation as well as for distress and mental suffering incurred by them as a consequence of UNMIK's behaviour.

The Panel also considers appropriate that UNMIK:

- In line with the UN General Assembly Resolution on "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (A/Res/60/147, 21 March 2006), takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme, including restitution compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict;
- Takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring.

FOR THESE REASONS,

The Panel, unanimously,

- 1. FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**

2. FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH REGARD TO MRS DRAGA ĐEKIĆ (CASE NO. 68/09), MRS VASILJKA NIKOLIĆ (CASE NO. 83/09), MR JEVTA SPASIĆ (CASE NO. 235/09) AND MRS BOSILJKA SPASIĆ (CASE NO. 235/09);

3. RECOMMENDS THAT UNMIK:

- a. URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF MRS DRAGA ĐEKIĆ, MRS VASILJKA NIKOLIĆ, MR JEVTA SPASIĆ AND MRS BOSILJKA SPASIĆ, AS WELL AS INTO THE ABDUCTION AND KILLING OF MR SREĆKO ĐEKIĆ, 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 ABOVE MENTIONED CASES, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS AND THEIR FAMILIES;**
- c. TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANTS AND THEIR FAMILY 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

BDMP	Bureau for Detainees and Missing Persons
CCKM	Coordination Centre for Kosovo and Metohija of the Republic of Serbia
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
HLC	Humanitarian Law Centre
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
IPP	International Public Prosecutor
KFOR	International Security Force (commonly known as Kosovo Force)
KLA	Kosovo Liberation Army (Albanian: <i>Ushtria Çlirimtare e Kosovës, UÇK</i>)
MP	Missing Person
MPU	Missing Persons Unit
MUP	Ministry of Internal Affairs (Serbian: <i>Министарство унутрашних послова, МУП</i>)
NATO	North Atlantic Treaty Organization
OMPF	Office on Missing Persons and Forensics
OSCE	Organization for Security and Cooperation in Europe
SRSG	Special Representative of the Secretary-General
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
VRIC	Victim Recovery and Identification Commission
WCIU	War Crimes Investigation Unit