



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: 14 December 2013

Case No. 87/09

Nenad STOJKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, on 14 December 2013,
with the following members taking part:

Mr Marek NOWICKI, Presiding Member
Ms Christine CHINKIN
Ms Françoise TULKENS

Assisted by

Mr Andrey Antonov, Executive Officer

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

Having deliberated, 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 complaint was introduced on 7 April 2009 and registered on 30 April 2009.

2. On 26 February 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG)¹ for UNMIK's comments on the admissibility of the case.
3. On 28 May 2010, the SRSG provided UNMIK's response.
4. On 11 August 2011, the Panel declared the complaint admissible.
5. On 15 August 2011, the Panel forwarded its decision to the SRSG requesting UNMIK's comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
6. On 19 September 2011, the SRSG provided UNMIK's comments on the merits of the complaint, together with the relevant documentation.
7. On 16 September 2013, the Panel requested UNMIK to confirm if the disclosure of files concerning the case could be considered final. On the same day, UNMIK provided its response.
8. On 2 December 2013, the Panel obtained additional information from the complainant and his family.

II. THE FACTS

A. General background²

9. The events at issue took place in the territory of Kosovo after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
10. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a "Military Technical Agreement" by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.

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

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

11. 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.
12. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
13. 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.
14. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
15. 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.

16. 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.
17. 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”.
18. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
19. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (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.
20. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.

B. Circumstances surrounding the disappearance and killing of Mr Dragan Stojković

21. The complainant is a brother of Dragan Stojković, who was an UNMIK national staff member working for the Building and Management Services (BMS) in Prishtinë/Priština.
22. The complainant states that on 28 August 1999, Dragan Stojković left for work. Some time later, while the complainant was still in Dragan Stojković's apartment, two Kosovo Albanian males knocked on the door and asked if Dragan Stojković wanted to sell his flat. They allegedly intimidated that it was not fair that two Albanian families were living in tents, while Dragan Stojković had a whole apartment for himself.
23. Mr Dragan Stojković did not return from work on that day. On 29 August 1999, the complainant reported his disappearance to UNMIK.
24. On 30 August 1999, the complainant was interviewed by UNMIK Security Special Investigations Unit (SIU); he provided a photocopy of this statement to the Panel. On that occasion, the complainant informed the SIU that his brother's apartment had been broken into three or four times in the last weeks before he disappeared. On one occasion, Dragan Stojković had allegedly managed to stop one of the intruders and to bring him to an UNMIK Police officer living in the same apartment building. The complainant also mentioned to UNMIK Security that a few days before disappearing his brother had acted as an interpreter for KFOR in a case involving an Albanian family illegally occupying a flat somewhere nearby.
25. The mortal remains of Dragan Stojković have been received by the complainant and Dragan Stojković's elder son on 13 August 2003 and buried on 14 August 2003, in Bitola, Former Yugoslav Republic of Macedonia (FYROM).
26. The complainant also states that he, together with his sister-in law (the wife of Dragan Stojković), provided the details related to Dragan Stojković's disappearance to the Serbian prosecutors in Belgrade. The complainant states that he has never been contacted by UNMIK Police or prosecutors with respect to the criminal investigation into his brother's disappearance and killing. The only contact was in relation to the handover of mortal remains in August 2003. Dragan Stojković's wife was only contacted once, in autumn 1999, by an investigator from UNMIK Security. However, she does not recall whether he recorded her formal statement or not.
27. Dragan Stojković's disappearance was likewise reported to the ICRC, which opened a tracing request for him on 1 December 1999.
28. The name of Dragan Stojković appears in the database compiled by the UNMIK OMPF³ and in the list of missing persons 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. The relevant entry in the online list of missing persons maintained by the ICMP⁴ reads in relevant parts: "Reported date of disappearance: 08-28-1999", "Sufficient

³ The OMPF database is not open to public. The Panel accessed it with regard to this case on 9 December 2013.

⁴ The ICMP database is available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp_details_popup&l=en (accessed on 9 December 2013).

Reference Samples Collected” and “ICMP has provided information on this missing person on 06-20-2003 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters.”

C. The investigation

29. The file in the Panel’s possession consists of the documents presented by UNMIK, which were previously held by the UNMIK Police and the OMPF. When presenting the file to the Panel, in September 2011, UNMIK noted that more information, not contained in the presented documents, may exist in relation to this investigation. However, on 16 September 2013, it confirmed to the Panel that nothing else has been obtained.
30. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made them available under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

Initial investigative efforts by UN Security and UNMIK Police

31. As Dragan Stojković was a UN staff member assigned to UNMIK BMS, the SIU of UNMIK Security were involved in the investigation from the very beginning. An SIU memorandum, dated 29 August 1999, confirms that the complainant last saw his brother on 28 August 1999, at around 08:00, when Dragan Stojković left for work. At around 09:00 Dragan Stojković left from a location where he supervised repair work, to get some supplies, but he never returned. Likewise, he did not come to the site where he was to collect the supplies. Dragan Stojković was supposedly seen at around 11:00 by his supervisor in UNMIK Headquarters.
32. According to the same report, at around 12:00, Dragan Stojković spoke to a friend of his. About the same time the vehicle that Dragan Stojković was presumably driving was found parked near a “paint store” in Prishtinë/Priština. The owner of that store denied that the victim had visited his store on that day. An unoccupied Serbian-owned house located between the vehicle parking place and the paint store was set on fire on that night. UNMIK Police officers searched the house and the surrounding area, but found nothing that could help in search for Dragan Stojković.
33. In the morning of 29 August 1999, UNMIK SIU checked Dragan Stojković’s apartment, but found no one there. The door lock was malfunctioning, thus the door could not be locked.
34. A few hours later, in the afternoon of 29 August 1999, upon receiving complainant’s report, the SIU officers went to the apartment of his brother and found it occupied by two young Kosovo Albanian males, M.A. and X.A. Both were apprehended by the SU, handed over to UNMIK Police and further detained. SIU officers advised UNMIK Police “of the possible connection between the disappearance of Dragan and the attempted apartment takeover.”
35. On 30 August 1999, the complainant was interviewed by the SIU. He mentioned that his brother’s apartment was burgled three or four times prior to his disappearance, but that he was unaware whether Dragan Stojković had reported them to the police. On 27 August 1999,

Dragan Stojković invited the complainant to stay in his apartment. He also asked the complainant to stay in the flat during the following day, until some workers came to install a metal door, to replace the one damaged during those repeated break-ins. In the morning of 28 August 1999, Dragan Stojković went to work. At around 13:30 two young Albanian males knocked on the door, allegedly looking for another Albanian, not known to the complainant. Shortly after they left, two other young Albanians came, also looking for another person. When the complainant told them that he did not know that one either, they inquired if his brother was planning to sell the apartment. The complainant told them to come later and talk to Dragan Stojković himself. They got irritated and said that Dragan Stojković should be forced to sell it, or he will be “moved out.” They asked for Dragan’s phone number, but the complainant did not give it to them.

36. According to the same statement, at around 19:30, the complainant received a phone call from Dragan Stojković’s colleague, Ms J.N., who asked him whether his brother was at home. When she had learned that he had not yet returned from work, she told the complainant that the last time she heard Dragan Stojković was at around noon on radio; she tried to contact him later, but without success; no one else had seen him the whole afternoon.
37. According to the same statement, as Dragan Stojković did not return home in the evening, in the morning of 29 August 1999 the complainant called Ms. J.N. He then checked with a couple more persons who knew his brother, but no one had seen him. After that, he met with Dragan Stojković’s supervisor and subsequently with the SIU. When asked whether Dragan Stojković had any enemies, the complainant stated that his brother had once acted as an interpreter for KFOR, when an Albanian family was evicted from an illegally occupied Serbian house; thus that family may have wished to take revenge on him. Also, once Dragan Stojković had caught a young Albanian male who broke into his apartment; he brought that person to UNMIK Police officers living in the same building, but he managed to escape. The complainant also clarified that Dragan Stojković did work for the Serbian government, but only in building maintenance services. The complainant added that his brother would not have left Kosovo without telling anyone. He also stated that Dragan Stojković’s wife and two children had recently moved to Bitola, FYROM, because of the security situation.
38. On 31 August 1999, Ms J.N., provided a voluntary statement to the SIU. She stated that on 28 August 1999, at around 10:30, she overheard a radio communication between Dragan Stojković and one of the supervisors, who she believed was Mr S.J.; the latter was apparently planning to leave Kosovo on that day. Some time later she overheard the Chief of BMS calling Dragan Stojković, but there was no response. From 18:00 onwards, she tried to phone Dragan Stojković on his mobile phone, without success. Later in the evening, the complainant told her that his brother did not return from work. She mentioned that an UNMIK national staff member, who openly “showed animosity to Dragan”, may somehow be connected to his disappearance. She was sure that Dragan Stojković would not have left Kosovo without telling anyone.
39. By a memorandum, dated 11 October 1999, the SIU informed the UNMIK Chief Security Officer that despite all actions undertaken no information regarding Dragan Stojković’s whereabouts had been received; therefore, the SIU suspended its investigation. The investigative file does not reflect whether the SIU was ever informed about the subsequent identification of Dragan Stojković’s mortal remains, in 2003 (see § 25 above).

40. In addition to the above information, this memorandum reveals that the SIU conducted “a series of background checks with his work crew [...] and at numerous building supply dealers with whom he was in regular contact.” These checks identified that the last company he visited was a hardware shop in Prishtinë/Priština. The owner informed the SIU that on 27 August 1999 Dragan Stojković had collected some items from his shop for 1576.50 deutschemarks and promised to pay him on 28 August 1999, but did not show up to pay. It was also confirmed that Dragan Stojković did not collect the necessary cash from UNMIK to make this payment, before he went missing.
41. The same memorandum adds that Dragan Stojković did serve in the Yugoslav army “during the crisis” for two months, as a reservist. It also states that the two Albanian individuals previously arrested for illegally occupying Dragan Stojković’s flat had been released and that they had returned to the flat and thrown the complainant out of there; shortly thereafter, the complainant and his father left Kosovo. According to the same memorandum, on 15 September 1999, UNMIK Security contacted the victim’s wife, but she possessed no valuable information about her husband’s whereabouts or the circumstances of his disappearance. This memorandum contains her contact details, but her statement is not in the file.

Investigation by UNMIK Police (cases nos CCIU 1999/00020 & MPU 2000-00014)

42. An UNMIK Police Initial Report, dated 29 August 1999, reveals that the case no. 1999-00020 was initiated as “arson” of a house, in which an UNMIK Police officer was reportedly residing. According to the same report, the UNMIK Police officer thought to have been residing at that house was initially reported missing. Further inquiries proved that the one “missing” was not an UNMIK Police officer but an UNMIK national staff member, Dragan Stojković, as the UN vehicle that he drove away the last time he was seen alive was found parked near that house. The house and the surrounding territory were searched by UNMIK Police, but no trace of Dragan Stojković’s presence there was found. No record of that search is in the file.
43. According to an UNMIK Police Supplement/Continuation Form, dated 29 August 1999, the investigation into the disappearance of Dragan Stojković was given a number 1999-00020 and the case was a “missing person file.”
44. According to the UNMIK Police Enquiry Proforma, dated 29 August 1999, Mr M.A. and Mr X.A. were arrested at 16:40 on that day and brought to the detention centre. The UNMIK Police Arrest and Detention Certificates confirm that both were detained at the Prishtinë/Priština detention centre on 29 August 1999, at 19:00, for “illegal occupation of another person’s flat”. According to a handwritten note on one of the forms, an UNMIK Police officer from a “Major Crime Unit” was to see both detainees on the following morning. Both documents indicate that M.A. and X.A were released on 30 August 1999, at 11:00; their statements are not found in the file.
45. The file also contains an earlier Police Enquiry Proforma, dated 25 August 1999, regarding Dragan Stojković’s report to the police regarding the four consecutive burglaries of his apartment, on 18, 22, 24 and 25 of August 1999 respectively. On those occasions, a number of various valuable items were stolen; no suspects had been identified. There are no other documents in relation to this report in the file.

46. By a memorandum, dated 25 January 2000, a Special Adviser to the Deputy SRSG requested UNMIK Police to report to him on Mr Dragan Stojković's case. This inquiry was prompted by an e-mail request received by the Deputy SRSG from an officer of the KFOR/NATO Host Nation Support Coordination Center (HNSCC) in Thessaloniki, Greece. In that e-mail, the HNSCC officer explained that the wife of an UNMIK employee, Dragan Stojković, was looking for him. The last time she saw her husband was on 27 August 1999, when she left for FYROM. In that e-mail the HNSCC officer provided the contact details of the complainant's wife in FYROM, as well as personal details of Dragan Stojković.
47. By a memorandum, dated 3 February 2000, bearing a reference no. 2000-00014, the MPU requested UNMIK Police Prishtinë/Priština Regional Commander to provide information in relation to the two persons arrested in Dragan Stojković's apartment in August 1999. The file contains copies of the above-referred UNMIK Police documents in relation to their arrest, detention and release (see § 44).
48. On 9 February 2000, the MPU updated the above-mentioned Special Adviser to the Deputy SRSG regarding the e-mail contact with the HNSCC officer, attaching copies of e-mail messages that do not provide any additional information.
49. The file contains an MPU Case Continuation Report (CCR) on the case no. 2000-00014, which has a number of entries. An entry dated 11 February 2000 reads: "we'll wait for Prishtina Regional's response but I suspect we'll have to ask someone to go out & investigate this case."
50. Another MPU CCR's entry, dated 12 February 2000, states that on that day an officer from the UNMIK Police Regional Investigation Unit (RIU) for Prishtinë/Priština had informed the MPU about their case (no. 1999/0099), related to a murder of an unidentified male killed by stabbing, whose body was found on 13 November 1999 in a village "Lukade", "not far from a TMK base ... on top of an ex-mass grave". The MPU investigator noted certain resemblances between the photographs of that victim and those of Dragan Stojković. The RIU provided the MPU with a complete copy of their case file. The same MPU investigator noted that in case this victim is confirmed to be Dragan Stojković, it would prove "that there are indeed illegal detention places", as the complainant's brother went missing on 28 August 1999 and this victim "was found freshly killed on 13/11/99." A memorandum from the Chief of the MPU, also dated 12 February 2000 (with photos of that unidentified victim's body), puts forward the same proposition.
51. On 15 February 2000, the UNMIK Police Prishtinë/Priština Regional Intelligence Unit responded to the MPU that they had no records which could assist the MPU in their investigation. On 23 February 2000, the UNMIK Police Prishtinë/Priština Regional Investigation Unit similarly informed the MPU that they have "no records on about unidentified homicide cases where this missing person case matches."
52. By a memorandum dated 29 February 2000, the CCIU updated the above-mentioned Special Adviser to the Deputy SRSG that there was no progress in this investigation.
53. An entry in the MPU CCR, dated 29 February 2000, ends with a statement: "This matter should be investigated by the police – who is going to do it?" Another entry on the same date

reads: “after securing concurrence of [the investigator] and supervisor, refer matter to Commander Pristina Region for investigation. Ensure that request explicitly asks them to investigate.”

54. An UNMIK Police Supplement/Continuation Form (an investigator’s diary on the case 1999-00020) has an entry dated 1 March 2000, which reads that the RIU confirmed to an MPU investigator that the “recovered body was not that of Dragan Stojković.” The same MPU investigator added that there was information that Dragan Stojković may have departed the area voluntarily and that MPU officer was going to follow up on that. The officer concluded the entry with a recommendation to interview a potential witness.
55. By a memorandum dated 4 March 2000, UNMIK Police MPU requested the CCIU to investigate the disappearance of Dragan Stojković. This memorandum bears a reference number 2000-00014; it refers to the two persons arrested in Dragan Stojković’s flat.
56. On 10 March 2000, UNMIK Police Prishtinë/Priština RIU informed the MPU that they had tried to link the case of Dragan Stojković’s disappearance with their file no. 1999-0099 (see § 50 above), related to the location of an unidentified male victim’s body, with a description similar to that of the complainant’s brother. After one witness, a colleague of Dragan Stojković, confirmed that the unidentified victim was not the complainant’s brother, the potential identification was ruled out.
57. By a memorandum dated 24 April 2000, the MPU investigator informed the above-mentioned Special Advisor to the Deputy SRSG that the case had been referred to the CCIU for investigation. The case was to be reviewed next on 30 June 2000. The investigator also stated that he would be leaving the Mission due to the end of his tour of duty and provided the contact details of his replacement.
58. A CCIU memorandum, dated 28 May 2000, in reference to the CCIU investigation no. 1999-00020, addressed to a “Prosecutor”, states that the body found in November 1999 was not that of Dragan Stojković and that this case is sent back to the MPU, as “there are no more investigations necessary or possible”. The recommendation “Close this case and consider it inactive” at the bottom of this memorandum is approved on 4 June 2000, apparently by an UNMIK Police Deputy Commissioner.
59. An MPU CCR’s entry dated on the case no. 2000-00014, dated 30 June 2000, reads: “update complainants – check w/ CCIU.”
60. The file also contains a Victim’s Identification Form in relation to Dragan Stojković, prepared by the ICRC between 1 July and 20 September 2001 (see § 28 above). Attached to it are copies of his personal documents and a photograph.
61. On 10 November 2001, an MPU investigator added another note to the CCR on the case 2000-00014, reflecting developments. It is stated that this investigation was “connected in the meantime with an unidentified body, all information is matching but there are no photographs available from the dead body.” The plan of further action set out in that note for December 2001 included contacting the complainant and Dragan Stojković’s wife in an attempt to identify the body and, if identification is positive, handing it over to the family. There is no information whether it was done or not.

62. On 22 May 2002, another document reflecting the ante-mortem data of Dragan Stojković and presenting contact information of the complainant was received by the MPU from the ICRC office in Belgrade.
63. According to another CCR entry, the MPU case no. 2000-00014 was closed on 15 August 2003, apparently after identification and handover of Dragan Stojković's mortal remains (see §§ 80 - 82 below).
64. According to a handwritten note in the file, the case was reviewed on 18 August 2003. This note gives a very brief overview of the available facts; it mentions the two persons arrested in Dragan Stojković's flat, names them "suspects" and confirms that no statements from them exist. The case was thereby called "still an MPU case."
65. An UNMIK Police WCIU Case Analysis Report, on the case no. 1999-00020, dated 13 August 2007, provides the following summary: "A UN employee was missing from work. His vehicle was parked near his home. His home had been burned. His body was not found at the residence. He is only missing at the initiation of this report. The missing person case will be handled by the investigation section of Pristina Station 1." The field "Investigator recommendation/Opinion" reads: "Case closed on 21-Jun-2000." According to a handwritten note at the bottom of this Report, it was again reviewed on 17 December 2007. The disposition of the case is stated as "Case closed in 2000. No evidence. No suspect."
66. According to a printout of an UNMIK Police WCIU's database, dated 2 September 2007, the investigation into the abduction of Dragan Stojković was initiated on 29 August 1999, under the case number 1999-00020. In the "Summary" field, it is mentioned that "His vehicle was parked near his home. His home had been burned. His body was not found at the residence." The case was closed on 21 June 2000. The field "Investigator" of this printout reads "missing files".
67. On 10 June 2009, a prosecutor of the Kosovo Special Prosecution Office reviewed Dragan Stojković's case. The field "Factual Circumstances" of the case review report reads: "On 28th of August 1999, in Pristina, an UN employee, Dragan STOJKOVIC was missing from work. His vehicle was parked near his home. His home had been burned. His body was not found inside of his home. This case will be handled by the investigating section of Pristina Station #1." The case was qualified as "kidnapping" and "pillaging/destruction of property".
68. The same report states that there were no suspects, that witnesses had been interviewed and that there was information that Dragan Stojković may have departed the area voluntarily. The report concludes that the case should remain closed until additional information becomes available. The prosecutor, nevertheless, requested that the police to "try to find the MP [...], interview victim's wife [...]; try to identify witnesses and then suspects." No further information in relation to this investigation is in the file.

Location of an unidentified body in September 1999 (cases nos CCIU 1999/00152 & MPU 2001-00024)

69. A British KFOR Initial Case Report dated 2 September 1999 reveals that on 1 September 1999, at around 18:00, a dead body of an unidentified male with a description similar to that

of Dragan Stojković was found by a resident of an area called “Musovic Mahala”, close to Devet Jugoviq/Devet Jugovića village, located around 10 kilometres to the North from Prishtinë/Priština. The discovery of the body was reported to the British KFOR at around 20:00.

70. In the morning of 2 September 1999, the scene was visited by KFOR and UNMIK Police units. After an inspection of the body at the scene, a KFOR specialist presupposed that the deceased male “had sustained three gunshot wounds to his upper torso, with one of the wounds being below his left jaw-line.” He also stated that, judging by the state of decomposition, the death had occurred no longer than a week prior to the discovery of the body. At the end of the report it is stated that all recovered evidence was handed over to the UNMIK Police and that the body was conveyed to the Prishtinë/Priština hospital, where it was registered under no. 1478.
71. On 2 September 1999, Mr H.K., the person who located the body, was interviewed by UNMIK Police. His statement is included in the file; it relates exclusively to the circumstances of the discovery of the body on 1 September and his subsequent report to KFOR.
72. A report from UNMIK Police, dated 8 September 1999, indicates that two officers went to Prishtinë/Priština District Court to obtain an order for an autopsy. They were advised by an investigating judge to first present him with a corresponding number for this dead body in the morgue’s registry book. The officers contacted the hospital and found that the body was registered in their books under no. 1478. The officers also mentioned in the report that the pathologists had no possibility to photograph the body during the autopsy.
73. The autopsy order was issued by an investigating judge of Prishtinë/Priština District Court, on 9 September 1999. On 10 Sep 1999, the body was autopsied in the morgue at Prishtinë/Priština hospital. According to the autopsy report no. 555, at the moment of the examination, the body had no *rigour mortis*, which supported the KFOR specialist’s conclusion regarding the time of death. The cause of death was established to be a gunshot wound to the back. There are no photographs attached to the autopsy; the report also states that some samples of the material from the clothes were taken for further analysis. After the autopsy, the body was buried in Dragodan cemetery in Prishtinë/Priština.
74. The UNMIK Police CCIU opened an investigation into the murder of an unidentified victim (body no. 1478), under case no. 1999/00152. The earliest investigative document, a List of Exhibits, in this part of the file is dated 6 July 2000.
75. On 10 June 2000, this body was exhumed and, on 28 June 2000, autopsied by ICTY experts. The ICTY experts noted that the body had undergone an autopsy before; they confirmed that the cause of death was a “gunshot wound to the back of chest”. The autopsy report and the Presumptive Identification Form bearing the ICTY logo, both dated 28 June 2000, are present in the file. After collecting the necessary DNA samples, the body was re-buried under the code name JA-041/033.
76. The MPU opened an investigation in relation to this unidentified victim, under a reference number 2001-00024. An entry in the CCR on this case, dated 28 May 2001, shows that the MPU received information regarding this unidentified body from the CCIU case no.

1999/00152 and considered linking them. A next-day entry indicates that the MPU had collected an autopsy report on the unidentified body no. 1478 from the Prishtinë/Priština morgue; they also obtained information that the body was buried in Dragodan cemetery, but the location was not known. The investigator compared the description of the body no. 1478 against a number of ICTY autopsy reports on the bodies exhumed in Dragodan cemetery and concluded that it was probably the one recorded under the ICTY code JA-041/033.

77. On 30 May 2001, on the basis of the thorough comparison of the two autopsy reports, the MPU concluded that the dead body no. 1478 was the one examined by the ICTY under code JA-041/033. On 1 June 2001, the same information was reflected in an entry to the CCR on the MPU case no. 2001-00024.
78. A CCR entry of 3 June 2001 indicates that the MPU planned to contact the wife of Dragan Stojković and invite her to come to Prishtinë/Priština for identification of this body, which was believed to be her husband's. However, the file does not reflect any action in this regard.
79. On 15 October 2001, the MPU informed UNMIK Security about this possible identification and asked for Dragan Stojković's photograph from his UN ID card. No further information in this part of the investigative file is reflected in the documents in the Panel's possession.

Identification and return of Dragan Stojković's mortal remains in 2003

80. On 17 June 2003, the ICMP issued a DNA Report, confirming a match between the sample taken from the body under the code JA-041/033 and the samples collected from Dragan Stojković's wife and son. On 7 July 2003, UNMIK OMPF issued a Confirmation of Identification of Dragan Stojković. The back-up comparison of ante-mortem and post-mortem data, also conducted on 7 July 2003 by the MPU, in connection to the case no. 2000-00014, was, however, inconclusive. All the OMPF documents likewise bear the MPU no. 2000-00014.
81. An OMPF Death Certificate was issued on 9 July 2003, and an Identification Certificate on 16 July 2003. According to these documents, the mortal remains, which were identified as those of Dragan Stojković, were located in Prishtinë/Priština on 10 June 2000. The autopsy was conducted on 28 June 2000; the death was established to have been caused prior to June 2000, by a "gunshot wound to the back of chest". A Confirmation of Death document was subsequently issued by a Serbian medical institution on 13 August 2003.
82. On 16 July 2003, following an order of an international judge at the Prishtinë/Priština District Court, the mortal remains of Dragan Stojković were exhumed from the grave under the code JA-041-033, and on 13 August 2003 handed over to his family.

Other document in the file

83. The investigative file also contains a letter from Dragan Stojković's wife to the UNMIK Office in Belgrade, dated 30 July 2001, where she requested to be paid the remainder of her husband's salary. She also expressed her dissatisfaction with UNMIK's attitude to this matter, as up to that date UNMIK "did not even find it relevant to inform me about missing of my husband and the father of two juveniles." She also informed UNMIK about illegal occupation of their apartment in Prishtinë/Priština and asked it to take action against it as

well. Her full contact details were in the letter; attached to it were copies of relevant personal documents.

III. THE COMPLAINT

84. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance and killing of Dragan Stojković. In this regard, the Panel deems that the complainant invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).

IV. THE LAW

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

1. The scope of the Panel's review

85. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.

86. In determining whether it considers that there has been a violation of Article 2 (procedural limb) and of Article 3 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 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.

87. 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.

88. 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.

89. 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 § 87). 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.
90. 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

91. The complainant in substance alleges a violation concerning the lack of an adequate criminal investigation into the disappearance and killing of Dragan Stojković. The complainant also states that neither he himself nor others of Dragan Stojković’s family were informed as to whether a criminal investigation was conducted and what the outcome was.
92. In his comments on the merits of the complaint, the SRSG does not dispute that UNMIK had a responsibility to conduct an effective investigation into the abduction and killing of Dragan Stojković, in line with its general obligation to secure the effective implementation of the domestic laws which protect the right to life, given to it by UN Security Council Resolution 1244 (1999) (see § 11 above) and further defined by UNMIK Regulation No. 1999/1 *On the Authority of the Interim Administration in Kosovo* and subsequently, UNMIK Regulation 1999/24 *On the Law Applicable in Kosovo*, and Article 2 of the ECHR.
93. In this regard, the SRSG stresses that this responsibility stems from the procedural obligation under Article 2 of the ECHR to conduct an effective investigation where death occurs in suspicious circumstances not imputable to State agents. He further argues that, in general, when considering whether UNMIK has satisfied its procedural obligations under Article 2 of

the ECHR, the Panel must take into consideration the special circumstances in Kosovo at the time.

94. The SRSG accepts that Dragan Stojković disappeared in life-threatening circumstances. The SRSG adds that in June 1999, when he was abducted, “the security situation was 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.”
95. The SRSG considers that such an obligation is two-fold, including an obligation to determine through investigation the fate and/or whereabouts of the missing person; and an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person.
96. The SRSG argues that in its case-law on Article 2, the European Court of Human Rights has stated that due consideration shall be given to the difficulties inherent to post-conflict situations and the problems limiting the ability of investigating authorities in investigating such cases. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court in the case *Palić v. Bosnia and Herzegovina* stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources [...]”
97. In the view of the SRSG, in the aftermath of the Kosovo conflict, UNMIK was faced with a similar situation as the one in Bosnia. Many of those persons who were unaccounted for were abducted, killed and buried in unmarked graves inside or outside Kosovo, which made very difficult locating and recovering their mortal remains.
98. The SRSG explains that in June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of the operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština. The SRSG states that, in the effort to demonstrate that crimes were systematic and widespread, the ICTY teams conducted autopsies on as many bodies as possible, carrying out little or no identification work; moreover, unidentified bodies exhumed in 1999 were reburied in locations still unknown to the OMPF. After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “ex-officio, without any broader

prosecutorial strategy”. As a consequence, a large amount of unstructured information was collected. The SRSG states that, taking into account the difficulties described above, the process “of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one” in Kosovo. The SRSG concludes that the work of the OMPF contributed greatly to determining the whereabouts and fate of the missing from the Kosovo conflict; however it was not possible to locate all the missing within the timeframe and resources available at that time.

99. The SRSG further argues that fundamental to conducting effective investigations is a professional, well-trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

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

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

100. The SRSG states that UNMIK international police officers had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police. He further states that these investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, “such constraints inhibited the ability of [...] UNMIK Police to conduct all investigations in a manner [...] that may be demonstrated, or at least expected, in other States with more established institutions and without the surge in cases of this nature associated with a post-conflict situation.”
101. With regard to this particular case, the SRSG first acknowledges the efforts of UNMIK Security SIU, which immediately reacted to the report of the complainant regarding disappearance of his brother.
102. In relation to the obligation to locate the missing person, the SRSG states that UNMIK OMPF collected the necessary DNA samples from Dragan Stojković’s family; once his body was found the OMPF compared the ante-mortem and post-mortem data to confirm the identification. The OMPF also performed the autopsy. Likewise, OMPF had arranged the handover of the mortal remains and provided all relevant documents. Therefore, in SRSG’s

view, UNMIK fully discharged itself of this obligation through quick identification of the body by DNA, comparing the ante-mortem and post-mortem data, and quick return of Dragan Stojković's mortal remains to the family.

103. With respect to the investigation aimed at identifying and bringing to justice those responsible for the abduction and killing of Dragan Stojković, the SRSG submits that “UNMIK Police did open and pursue an investigation into the whereabouts of Mr. Dragan Stojković, which resulted in locating [his] mortal remains.”
104. The SRSG concludes that “it is evident that UNMIK OMPF did make all reasonable investigative efforts in accordance with Article 2 procedural requirements to identify the perpetrators and the mortal remains of Mr. Dragan Stojković.” However, “without witnesses coming forward or physical evidence being discovered investigations in missing persons cases stall because of a lack of evidence.” For these reasons, according to the SRSG, there has not been a violation of Article 2 of the ECHR.
105. The SRSG also informed the Panel that in a view of a possibility that more information in relation to this case exists, he might make further comments on this matter. However, no further communication in this regard, other than confirmation of the full disclosure of the investigative files, has been received to date.

3. The Panel's assessment

106. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) in that UNMIK did not conduct an effective investigation into the disappearance and killing of Dragan Stojković.

a) Submission of relevant files

107. At the Panel's request, on 19 September 2011, the SRSG provided copies of the documents related to this investigation, which UNMIK was able to recover. The SRSG also noted that there is a possibility more information, not contained in the presented documents, exists, but provided no further details. On 16 September 2013, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 7 above).
108. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikkbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005, § 56).
109. Furthermore, the Panel notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their

handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2.

110. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. However, the Panel notes that UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.

111. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaint on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of 15 March 2011, § 146).

b) General principles concerning the obligation to conduct an effective investigation under Article 2

112. 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 (IACtHR) *Velásquez-Rodríguez* (see IACtHR, *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The positive obligation has also been stated by the United Nations Human Rights Committee (HRC) as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Articles 2 (3) (right to an effective remedy) of the ICCPR (see United Nations Human Rights Committee (HRC), General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (UN Document A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.

113. In order to address the complainant’s allegations, the Panel refers to the well-established case-law of the European Court of Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 86, Reports 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death,

whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).

114. 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 § 90 above, at § 136).
115. 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).
116. Setting out the standards of an effective investigation, the Court has stated that “besides being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition and affording a sufficient element of public scrutiny of the investigation or its results, the investigation must also be effective in the sense that it is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible” (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 90 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312, and ECtHR, *Isayeva v. Russia*, cited above, at § 212).
117. In particular, the investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 113, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigative work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
118. 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 § 116 above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 90 above, § 148, *Aslakhanova and Others v.*

Russia, nos. 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation “does not come to an end even on discovery of the body This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 64).

119. 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 *Ahmet Özkan and Others v. Turkey*, cited in § 115 above, at §§ 311-314; *Isayeva v. Russia*, cited in § 115 above, §§ 211-214 and the cases cited therein).” ECtHR [GC], *Al-Skeini and Others v. United Kingdom*, no. 55721/07, judgment of 7 July 2011, § 167, ECHR 2011).
120. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191). The United Nations also recognises the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons ... it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; see also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives; UN Document A/HRC/22/52, 1 March 2013).

c) Applicability of Article 2 to the Kosovo context

121. The Panel is conscious that Dragan Stojković disappeared shortly after the deployment of UNMIK in Kosovo in the aftermath of the armed conflict, when crime, violence and insecurity were rife.
122. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK's deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in

compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.

123. The Panel considers that this raises two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, second, whether such standards shall be considered fully applicable to UNMIK.
124. 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).
125. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court of Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 116 above, and ECtHR, *Jularić v. Croatia*, no. 20106/06, judgment of 20 January 2011). The Court has further held that that the procedural obligation under Article 2 continues to apply in "difficult security conditions, including in a context of armed conflict" (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited in § 119 above, at § 164; see also ECtHR, *Gülleç 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 § 115 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 115 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
126. The Court has acknowledged that "where the death [and disappearances] to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and [...] concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed" (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited above, at §164; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that "the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 113 above, at §§ 86-92; ECtHR, *Ergi v Turkey*, cited above, at §§ 82-85; ECtHR [GC], *Tanrikulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, at §§ 215-224;

ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).

127. 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 § 112 above, at § 1; HRC, *Abubakar Amirov and Aizan Amirova v. Russian Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK's obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
128. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan*, no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 17 above).
129. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel thus agrees with the SRSG that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
130. Lastly, in response to the SRSG's objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in

the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 116 above, at § 70; *Brecknell v. The United Kingdom*, no. 32457/04, judgment of 27 November 2007, § 62).

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

131. Turning to the particulars of this case, the Panel notes undisputed fact that Dragan Stojković's disappearance was reported promptly to UNMIK authorities, and later to the ICRC, Serbian authorities and other organisations. The investigative file reflects that UNMIK became aware of the disappearance on the day after it had happened, on 29 August 1999 (see § 31 above).
132. The purpose of this investigation was to discover the truth about the circumstances of Dragan Stojković's disappearance, to establish his fate and to identify the perpetrators. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
133. 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 §§ 116 - 117 above).
134. The Panel notes that there were obvious shortcomings in the conduct of the investigation from its commencement. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 90 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 116 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see § 19 above).
135. The Panel notes in this regard that according to the 2000 Annual Report of UNMIK Police, the complete executive policing powers in the Prishtinë/Priština region, including criminal investigations, were under the full control of UNMIK Police from 19 September 1999. Therefore, it was UNMIK's responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority 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.

136. In this respect, the Panel notes that the initial actions in search for Dragan Stojković had in fact been carried out by the SIU, in loose coordination with UNMIK Police. Also, the first to attend the scene of discovery of an unidentified body on 2 September 1999 was a British KFOR unit, which called UNMIK Police to attend. Having responded to this call only at initial stage, the KFOR handed over the whole matter to UNMIK Police (see § 69 above).
137. The Panel also notes the SRSG's assertion that the file submitted to the Panel may be incomplete, and his failure to provide further explanation in relation to this (see § 105 above). The Panel assumes that UNMIK cannot guarantee whether the file presented to the Panel is complete or not. In case it is not complete, it would indicate that one of the following situations may have occurred: no proper investigation was carried out; the file was not accurately and fully handed over to EULEX; or UNMIK failed to retrieve the complete file from the current custodian. 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 § 110 above). However, the Panel considers that whichever of these potential explanations is applicable, it would indicate a failure directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.
138. With regard to the first part of the procedural obligation, that is establishing the fate of Dragan Stojković, the Panel concludes from the file that his body was first located on 1 September 1999, collected by KFOR on 2 September 1999, autopsied by a local forensic pathologist on an order of Prishtinë/Priština District Court, on 10 September 1999, and buried as an unidentified victim in Dragodan cemetery in Prishtinë/Priština (see §§ 69 - 72 above). It was again exhumed and autopsied, on 28 June 2000, presumably by the ICTY specialists referred to by the SRSG in his comments (see § 98 above); at that time a DNA sample from the body was collected. The body was then again buried as an identified victim in the same cemetery (see § 76 above).
139. According to the ICRC's memorandum to UNMIK, dated 12 October 2001, the DNA samples which enabled this identification were collected from Dragan Stojković's wife and a son by the ICRC, sometime between 1 July and 20 September 2001 (see § 28). A DNA report confirming that this was in fact Dragan Stojković's body was issued by the ICMP on 17 June 2003. The body was re-exhumed on 16 July 2003, handed over to the family members on 13 August 2003 and eventually buried by his family at a final resting place on 14 August 2003 (see §§ 25 and 82 above). Subsequently, the MPU case no. 2000-00014 was closed on 15 August 2003 (see §§ 63 above).
140. Therefore, the Panel notes, in response to the SRSG's submission (see § 102 above), that the identification was made possible through the joint efforts of the local experts, the ICTY, the ICRC, the ICMP and UNMIK, the latter coordinating the process.
141. As regards the requirements of promptness and expedition, 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).

142. In this case, the immediate actions in reaction to the complainant's report regarding his brother's disappearance, were mostly carried out by UNMIK Security. The SIU inspected the apartment of the missing person and presumably the car which he was driving, apprehended the two persons illegally occupying his apartment and handed them over to UNMIK Police, interviewed the complainant and a witness, identified and questioned the owner of the shop, where Dragan Stojković purchased supplies the day before his disappearance, and some other actions. All that is reflected in two SIU reports, dated 29 August and 11 October 1999.
143. While appreciating these comprehensive efforts by the security investigators, the Panel notes that those were internal investigative actions within the Organisation, aimed primarily at locating its staff member and removing any threat to his life. Those can not substitute criminal investigation by national authorities, or at that time in Kosovo – UNMIK Police, in effort to identify the perpetrators and bring them to justice. The information collected through SIU actions, which were not conducted based on and in accordance with the applicable criminal procedure requirements, could not be accepted as evidence in court.
144. In this regard, there are numerous clarifications by the UN itself, confirming that the investigative proceedings conducted for example by UN disciplinary and security structures “are not of a criminal nature, but rather they are administrative proceedings, regulated by the internal law of the Organization” (see for example: UN Administrative Tribunal, *Araim v. The Secretary-General of the United Nations*, no. 1124, decision of 21 November 2001, p. 14, § V, UN Document AT/DEC/1022).
145. Therefore, the Panel will examine only the actions undertaken by UNMIK Police and other bodies authorised to conduct a criminal investigation.
146. Looking at the investigation from this perspective, the Panel notes that UNMIK Police in fact did not carry out any actions in immediate aftermath of the disappearance, or such actions have not been documented. The file does indicate that UNMIK Police inspected the burned house next to the place where Dragan Stojković's UN vehicle was found and the surrounding territory (see §§ 32 and 42 above). Regardless of the fact that that house proved to have no relation to this case, there is no report on this search in the file. It also appears that the UN vehicle, which was the single most important potential source of physical evidence of a possible abduction available at that moment, had not been not searched at all; this led to a complete loss of any potential evidence which that vehicle could have contained.
147. The two persons apprehended by the SIU in Dragan Stojković's apartment on 29 August 1999 and detained by UNMIK Police were clearly linked by the SIU to Dragan Stojković's disappearance as potential suspects. However, on the next morning both were briefly questioned by UNMIK Police and released, without even having their statement recorded (see §§ 44 and 47 above). Shortly thereafter, the same two persons reportedly “evicted” the complainant from his brother's apartment and settled there. However, UNMIK Police did not take any action in that direction. Likewise, despite the fact that the witnesses, the complainant and Ms J.N., the person named by Ms J.N. as a possible suspect (see § 38 above), as well as the shop owner (see § 40 above), were immediately available for interview, the police never recorded their statements.

148. Assessing the UNMIK Police's action in response to a discovery on 1 September 1999 of a body, which was later identified as that of Dragan Stojković, the Panel notes the same lack of action by UNMIK Police. The crime scene was inspected by KFOR, who collected the body and all evidence, and handed them over to UNMIK Police, which transported the body to the morgue and facilitated the autopsy.
149. Besides that, in the Panel's view, this lack of prompt reaction from UNMIK Police may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
150. Assessing this investigation against the need to take reasonable investigative steps and to follow the obvious lines of enquiry to secure the evidence, the Panel takes into account that a properly maintained investigative file should have included records of all investigative actions and particularly of the interviews with the complainant, suspects and all potential witnesses to the abduction. In all cases, such interviews should take place as soon as possible and should be recorded and retained in the case file⁵. The failure to identify, locate and formally interview the persons who were mentioned as being involved in the abduction again undermines the effectiveness of the investigation.
151. The Panel also notes in this regard that, as a general rule, all objects related to a possible crime under investigation should be examined, and all collectable physical evidence should be preserved, in the shortest possible time after a crime was allegedly committed. This is normally done regardless of the likelihood of a particular case coming to court, to ensure that if, or when, the potential suspects are identified, this evidence would be available for admission in trial.
152. With respect to this case, the Panel observes that at least four investigative files were opened in relation to this matter, which may be considered in two blocks: with regard to Dragan Stojković (CCIU case no. 1999/00020, abduction of Dragan Stojković, and MPU case no. 2000-00014, Dragan Stojković as a missing person), and with regard to the mortal remains discovered on 1 September 1999 (CCIU case no. 1999/00152, discovery of unidentified mortal remains, and MPU case no. 2001-00024, unidentified body). In the Panel's view, a separate assessment of UNMIK Police actions in these blocks of investigation is needed.
153. In relation to the CCIU and MPU investigations with regard to Dragan Stojković's disappearance, the Panel notes that no witness statements were ever collected and no proper investigative activity recorded, except for copying the SIU investigative file and some of correspondence. Although on a number of occasions conducting interviews and other actions were recommended, those recommendations appear to have never been followed (see §§ 54, 59, 61 and 78 above). At one point, in 2000, the MPU tried to link Dragan Stojković's case with a case under Prishtinë/Priština RIU's investigation related to an unidentified body found in November 1999, but the lead proved to be wrong (see § 56 above).

⁵ See: United Nations Manual On The Effective Prevention And Investigation Of Extra-Legal, Arbitrary And Summary Executions, adopted on 24 May 1989 by the Economic and Social Council, Resolution 1989/65.

154. With regard to the investigations related to the unidentified body later identified as that of Dragan Stojković, the scene where the body was found was never properly searched for traces. UNMIK Police did obtain copies of what appears to be the KFOR officer's handwritten notes regarding the crime scene examination, but never even tried to transcribe them. No photographs of the scene were taken and/or obtained from KFOR. The autopsy report, which failed to indicate the approximate time of death, was not questioned and the pathologist was not interviewed, in order to supplement his report. Eventually, the necessary samples were not collected from the body before it was buried; UNMIK Police even managed not to properly record the location where the body was buried. In the Panel's view, if Dragan Stojković's body had not been exhumed, autopsied and the DNA samples collected by the ICTY, in June 2000, his fate may have remained unknown until present.
155. Coming to the period within its jurisdiction, starting from 23 April 2005 the Panel notes that no further investigative activity took place with respect to remedying the apparent deficiencies mentioned above. After that critical date, the failure to conduct the necessary investigative actions persisted, thus, in accordance with the continuing obligation to investigate (see § 118 above), bringing the assessment of the whole investigation within the period of the Panel's jurisdiction.
156. The Panel also recalls the SRSG's general argument that "without witnesses coming forward or physical evidence being discovered investigations in missing persons cases stall because of a lack of evidence" (see § 104 above). Fully supporting this statement, the Panel must note that almost any investigation at its initial stage lacks a significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. As was shown, instead of actively searching for information and leads, UNMIK Police simply waited for further information to appear by itself. In this situation it may have led to the loss of potential evidence (see for example HRAP, *P.S.*, case no. 48/09, opinion of 31 October 2013, § 107)
157. The Panel is also aware that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, such an investigation must be undertaken in a serious manner and not be a mere formality. The Panel must therefore conclude that with respect to reasonable investigative steps and pursuing obvious lines of enquiry, serious deficiencies existed with respect to the effectiveness of this investigation, both in the part directed at establishing the whereabouts of missing person and in that aimed at the identification of the perpetrators and bringing them to justice.
158. As those responsible for the crime had not been located, UNMIK was obliged to use the means at its disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and that any new evidence had been considered, as well as to inform the relatives of Dragan Stojković regarding the progress of the investigation. As mentioned above (see § 153), such a review was undertaken on a number of occasion, but the recommendations have not been implemented. The MPU officer who conducted the review recommended that the case be handed over to the WCIU, for further investigation. However, regardless of the fact that there were leads to work on, no further investigative action is registered.

159. It has also to be noted that when there appeared a realistic possibility of a link between the Dragan Stojković's "missing person" case and the case related to the unidentified body found in November 2000, the MPU investigators in February 2000 recommended referring this case to the CCIU for investigation (see §§ 49 and 53 above). The case was in fact referred to the CCIU on 4 March 2000 (see §§ 55 above). However, less than two months after, on 28 May 2000, the CCIU informed a prosecutor that, as the identification proved to be wrong, the case was being sent back to MPU, as "there are no more investigations necessary or possible" (see §§ 58 above). In view of the above-mentioned failures in the investigative process, this supports the Panel's conclusion of lack of proper review.
160. The Panel also notes that this particular CCIU memorandum of 28 May 2000 appears to have been approved by a Deputy Police Commissioner, not a public prosecutor. In the Panel's view, a proper prosecutorial review of the investigative file may have resulted in additional actions recommended, so the case would not have stayed inactive for months to come.
161. In this context, the Panel recalls its position in relation to the categorisation of cases into "active" and "inactive", that any "categorisation of an investigation should take place only after the minimum possible investigative actions have been undertaken and obtainable information has been collected and analysed" (see e.g. HRAP, B.A., no. 52/09, opinion of 14 February 2013, § 82). In this case, such prioritisation should not have been made at the earliest before the complainant, witnesses and potential suspects had been formally interviewed about the circumstances of the disappearance, especially as it had occurred in obviously life-threatening circumstances, in the immediate aftermath of the conflict, and the evidence had been collected.
162. The review undertaken on the case 1999-00020 by UNMIK Police WCIU, in August 2007, appears to have been conducted as a simple formality, as the investigators had even erred in the assessment of the factual situation of the case and stated that "his vehicle was parked near his home ... [h]is home had been burned ... [h]is body was not found at the residence." This is despite that fact that the investigative file clearly shows that that house had no connection to Dragan Stojković, and that his body had already been returned to the family four years before that. The WCIU officer conducting this review to have possibly copied the wrong assessment of the case from their database and pasted it into the Case Analysis Report, or *vice-versa* (see §§ 65 and 66 above).
163. The only proper review of the case file took place in May 2001, by the MPU investigators working on the case 2001-00024 (unidentified body found in September 1999), which was only at that time received from the CCIU and which was even missing an autopsy report (see § 76 above). At that time the investigators were able to establish a very probable match between Dragan Stojković's ante-mortem data and the description of that unidentified body, and linked it to the body exhumed by ICTY and given a code JA-041/033 (see § 77 above). The identification could have been confirmed then, if the photographs and personal items found on the body were presented to the complainant or Dragan Stojković's wife. Although the MPU planned to do that (see §§ 78 - 79 above), it was never done.
164. In the SRSG's own words (see § 99 above), it was imperative for UNMIK Police to establish order and to quickly construct a framework to register and investigate crimes at the beginning of the Mission. The Panel agrees with the SRSG. However, in this case, in the

Panel's opinion, the prolonged failure to link the separate investigations into the missing person and into unidentified body shows this obligation is not fulfilled simply by the establishment of an adequate framework, but only when it becomes a properly coordinated system that is able to carry out an adequate and effective investigation in accordance with Article 2 of the ECHR.

165. It is highlighted by the fact that in February 2000, UNMIK Police Prishtinë/Priština RIU, and even Prishtinë/Priština Regional Intelligence Unit, confirmed to MPU that they had no information on any unidentified bodies matching Dragan Stojković's description (see § 51 above). The fact that the OMPF identification documents issued in July 2003 still reflect 10 June 2000, the date of exhumation by the ICTY, as the date of discovery of mortal remains (see § 81 above), instead of 1 September 1999, when his body was in fact found, indicates the persistent lack of coordination and proper exchange of information between relevant UNMIK organs at later stages as well. Even in 2007, the UNMIK Police WCIU did not seem to know that Dragan Stojković's body was located, identified and handed over to the family four years before (see § 162 above). It is also not clear whether the SIU had ever received that information (see § 39 above).
166. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires that in all cases the victim's next-of-kin must be involved in the investigation to the extent necessary to safeguard his or her legitimate interests (see ECtHR [GC], *Tahsin Acar v. Turkey*, no. 26307/95, judgment of 8 April 2004, § 226, ECHR 2004-III; ECtHR, *Taniş v. Turkey*, no. 65899/01, judgment of 2 August 2005, § 204, ECHR 2005-VIII).
167. The Panel notes from the investigative file that the only recorded contact between Dragan Stojković's family members and UNMIK authorities took place in August 2003, in relation to the identification and handover of his mortal remains. The Panel also notes in this respect the letter of Dragan Stojković's wife, dated 30 July 2001, where she had, among other things, expressed her dissatisfaction with the absence of any information in relation to the abduction of her husband. No further contacts with the complainant or other close members of Dragan Stojković's family are recorded in the file. Although the above-mentioned entry in an MPU's CCR, dated 30 June 2000, recommended to "update the complainants", it never happened.
168. In the Panel's opinion, it is not adequate to have so little contact with the authorities during almost a decade-long investigation under UNMIK's control. This should particularly be assessed in light of the fact that by May 2001, UNMIK already had a chance to fulfil at least a part of its obligation related to establishing Dragan Stojković's fate (see § 163 above), but it was not done for two more years, thus adding to the suffering of the family.
169. The Panel therefore considers that the investigation was not accessible to the complainant as required by Article 2.
170. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an adequate and effective investigation into the disappearance and killing of Dragan Stojković. There has been accordingly a violation of Article 2 of the ECHR under its procedural limb.

V. CONCLUDING COMMENTS AND RECOMMENDATIONS

171. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
172. The Panel notes that enforced disappearances and arbitrary executions 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 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.
173. 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.
174. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 19), UNMIK's responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
175. 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 (Grand Chamber), *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR (Grand Chamber), *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the diplomatic means available to it *vis-à-vis* EULEX and the Kosovo authorities, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the disappearance and killing of Dragan Stojković will be established and that perpetrators will be brought to justice. The complainant

and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;

- Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK's failure to adequately investigate the disappearance and killing of Dragan Stojković and makes a public apology to the complainant and his family in this regard;
- Takes appropriate steps towards payment of adequate compensation to the complainant for the moral damage suffered due to UNMIK's failure to conduct an effective investigation.

The Panel also considers appropriate that UNMIK:

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

FOR THESE REASONS,

The Panel, unanimously,

- 1. FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
- 2. RECOMMENDS THAT UNMIK:**
 - a. URGES EULEX AND OTHER COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE DISAPPEARANCE AND KILLING OF DRAGAN STOJKOVIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**

- b. PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE DISAPPEARANCE AND KILLING OF DRAGAN STOJKOVIĆ AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT;**
- c. TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 TO THE COMPLAINANT AND HIS FAMILY;**
- 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 COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov
Executive Officer

Marek NOWICKI
Presiding Member

ABBREVIATIONS AND ACRONYMS

CCIU - Central Criminal Investigation Unit
CCPR – International Covenant on Civil and Political Rights
DOJ - Department of Justice
DPPO - District Public Prosecutor’s Office
ECHR - European Convention on Human Rights
ECtHR - European Court of Human Rights
EU – European Union
EULEX - European Union Rule of Law Mission in Kosovo
FRY - Federal Republic of Yugoslavia
FYROM - Former Yugoslav Republic of Macedonia
HRAP - Human Rights Advisory Panel
HRC - United Nation Human Rights Committee
HQ - Headquarters
IACtHR – Inter-American Court of Human Rights
ICMP - International Commission of Missing Persons
ICRC - International Committee of the Red Cross
ICTY - International Criminal Tribunal for former Yugoslavia
KFOR - International Security Force (commonly known as Kosovo Force)
KLA - Kosovo Liberation Army
MoU - Memorandum of Understanding
MPU - Missing Persons Unit
NATO - North Atlantic Treaty Organization
OMPF - Office on Missing Persons and Forensics
OSCE - Organization for Security and Cooperation in Europe
RIU - Regional Investigation Unit
SIU – Special Investigations Unit of the UNMIK Security
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