



The Human Rights Advisory Panel

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DECISION

Date of adoption: 17 August 2012

Cases Nos 111/09, 117/09, 134/09, 178/09, 179/09, 180/09, 230/09, 231/09, 232/09, 240/09, 241/09, 253/09, 254/09, 259/09, 263/09, 284/09 and 286/09

Bogoljub KOSTIĆ, Pavle KOSTIĆ, Petra KOSTIĆ, Kristina NIKOLIĆ, Angelina KOSTIĆ, Slavica BANZIĆ and Dragica BOŽANIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 17 August 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Daniel Trup, Acting Executive Officer

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

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaints of Mr Bogoljub Kostić (cases nos 111/09, 231/09 and 232/09) were introduced on 8 April 2009; the complaints of Mr Pavle Kostić (cases nos 117/09 and 230/09) were introduced on 14 April 2009; the complaints of Mrs Petra Kostić (cases nos 178/09, 179/09 and 180/09) were introduced on 8 April 2009; the complaints of Ms Kristina Nikolić (cases nos 240/09 and 241/09) were introduced on 7 April 2009; the complaints of Mrs Angelina Kostić (cases nos 134/09 and 259/09) were introduced on 3 April 2009, the complaints of Mrs Slavica Banzić (cases nos 253/09, 254/09 and 263/09)

were introduced on 10 April 2009, and the complaints of Mrs Dragica Božanić (cases nos 284/09 and 286/09) were introduced on 3 April 2009. All complaints were registered on 30 April 2009.

2. On 1 October 2009, 23 December 2009 and 29 September 2010, the Panel requested Mr Bogoljub Kostić to provide additional information. No response was received.
3. On 23 December 2009, 29 September 2010 and 22 June 2011, the Panel requested Mr Pavle Kostić to provide additional information. No response was received.
4. On 23 December 2009 and 29 September 2010, the Panel requested additional information from Mrs Slavica Banzić. No response was received.
5. On 23 December 2009 and 29 September 2010, the Panel requested Mrs Petra Kostić to provide additional information. Mrs Petra Kostić responded on 28 October 2010. In addition, on 21 July 2011, Mrs Petra Kostić gave a statement to the Secretariat of the Panel.
6. On 23 December 2009 and 29 September 2010, the Panel requested Ms Kristina Nikolić to provide additional information. She did not respond.
7. On 9 December 2009, 23 December 2009 and 29 September 2010, the Panel requested Mrs Angelina Kostić to provide additional information. She did not respond.
8. On 9 September 2010 the Panel joined the complaints into two groups, pursuant to Rule 20 of the Panel's Rules of Procedure. The first group consisted of the complaints of Mr Bogoljub Kostić (cases nos. 111/09, 231/09 and 232/09), Mr Pavle Kostić (cases nos. 117/09 and 230/09), Mrs Petra Kostić (cases nos. 178/09, 179/09 and 180/09), Ms Kristina Nikolić (cases nos. 240/09 and 241/09), and Mrs Angelina Kostić (case no. 259/09). The second group consisted of the complaints of Mrs Angelina Kostić (case no. 134/09), Mrs Slavica Banzić (cases nos. 253/09, 254/09 and 263/09) and Mrs Dragica Božanić (cases nos. 284/09 and 286/09).
9. On 17 February 2012 the Panel decided to shift case no. 134/09 from the second to the first group of complaints.
10. Having been informed that Mrs Angelina Kostić had passed away on 26 June 2010, the Panel addressed her relatives in a letter dated 13 June 2011, inquiring whether any of them wished to pursue the complaint on her behalf. However, to date the Panel received no reply in this regard.
11. On 21 December 2011, the Panel communicated cases nos 111/09, 117/09, 178/09, 179/09, 180/09, 230/09, 231/09, 232/09, 240/09, 241/09 and 259/09 to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on admissibility. The SRSG provided UNMIK's response on 6 February 2012.
12. On 22 February 2012, the Panel communicated case no. 134/09 and re-communicated cases nos 111/09 and 178/09 to the SRSG, for UNMIK's comments on admissibility. The SRSG provided UNMIK's response on 28 March 2012.

13. On 22 February 2012, the Panel communicated cases nos 253/09, 254/09, 263/09, 284/09 and 286/09 to the SRSG for UNMIK's comments on the admissibility of the complaints. The SRSG provided UNMIK's response on 25 April 2012.
14. On 18 May 2012, the Panel re-communicated cases nos 111/09, 178/09, 254/09, 263/09, 284/09 and 286/09 to the SRSG for UNMIK's additional comments on the admissibility of the complaints. The SRSG provided UNMIK's response on 11 June 2012.

II. THE FACTS

15. All complainants are former residents of Kosovo. All complainants, except Mrs Angelina Kostić, are currently living in Serbia proper. As indicated above, Mrs Angelina Kostić died on 26 June 2010.
16. Mr Bogoljub Kostić is the son of Mr Mladen Kostić and Mrs Angelina Kostić, and brother of Mr Nebojša Kostić. Mr Pavle Kostić is the son of Mr Anđelko Kostić and brother of Mr Živko Kostić. Mrs Petra Kostić is the mother of Mr Lazar Kostić and Mr Todor Kostić. Ms Kristina Nikolić is the daughter of Mr Rajko Nikolić and a sister of Mr Cvetko Nikolić. Mrs Angelina Kostić was the spouse of Mr Mladen Kostić. Mrs Slavica Banzić is the wife of Mr Spasoje Banzić and daughter-in-law of the late Mrs Desanka Banzić. Mrs Dragica Božanić is the wife of Mr Mladen Božanić and mother of Mr Nemanja Božanić.
17. The complainants supplement each other in description of events that took place on 18 July 1998, during an armed assault by the Kosovo Liberation Army (KLA) on the villages of Oterushë/Opteruša and Retimlë/Retimlje, Rahovec/Orahovac municipality, and in the following days.
 - A. **Facts with regard to the abduction and killing of Živko Kostić (case no. 117/09), Lazar Kostić (case no. 179/09), Todor Kostić (case no. 180/09), Nebojša Kostić (cases nos 231/09 and 259/09), Rajko Nikolić (case no. 240/09), Cvetko Nikolić (case no. 241/09), Spasoje Banzić (case no. 253/09), Mladen Božanić (case no. 284/09) and Nemanja Božanić (case no. 286/09)**
18. On 18 July 1998, Živko Kostić, Lazar Kostić, Todor Kostić, Nebojša Kostić, Rajko Nikolić and Cvetko Nikolić were abducted by KLA members from Retimlë/Retimlje village, while Spasoje Banzić, Mladen Božanić and Nemanja Božanić from Oterushë/Opteruša village, and taken in an unknown direction.
19. The complainants inform the Panel that all abductions were reported to the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross, and the Serbian Ministry of Internal Affairs (MUP).
20. Mrs Petra Kostić states that she reported the abductions of Lazar Kostić and Todor Kostić to the UNMIK Department of Justice, the International Criminal Tribunal for former Yugoslavia, OSCE, relevant Serbian authorities and other organisations.
21. Mrs Kristina Nikolić adds that she also reported the abductions of Rajko Nikolić and Cvetko Nikolić to KFOR and the International Commission on Missing Persons.

22. Mrs Slavica Banzić informs the Panel that she reported the events to the ICRC, the MUP and an UNMIK International Public Prosecutor in Prishtinë/Priština.
23. Mrs Dragica Božanić states that she reported the events to the ICRC, the OSCE and the "Police".
24. The names of all above-listed victims appear in the database compiled by the UNMIK Office on Missing Persons and Forensics (OMPF) as well as in a list of missing persons communicated by the ICRC to UNMIK Police on 11 February 2002.
25. In November 2004, the mortal remains of the victims were located by the OMPF in a mass grave, in a cave near Volljak/Volujak village, Klinë/Klina municipality.
26. The OMPF conducted autopsies of all mortal remains in December 2004, but no causes of their deaths were ascertained. Death certificates, confirmations of identity and identification certificates were issued by the OMPF in September 2006 (for Živko Kostić, Lazar Kostić, Todor Kostić, Nebojša Kostić, Mladen Božanić and Nemanja Božanić) and October 2006 (for Rajko Nikolić, Cvetko Nikolić and Spasoje Banzić). All mortal remains were handed over to the respective families on 13 October 2006.

B. Facts with regard to the abduction of Mladen Kostić (cases nos 134/09 and 232/09)

27. Mr Mladen Kostić was abducted on 18 July 1998, from Retimlë/Retimlje village, by KLA members and taken with the other above-listed victims in an unknown direction. Since that day his whereabouts have remained unknown.
28. The complainants inform the Panel that the abduction of Mr Mladen Kostić was reported to the ICRC, the Yugoslav Red Cross and OSCE.
29. An ICRC tracing request for Mr Mladen Kostić has remained open since 23 July 1998. Likewise, his name appears in the information sources referred to in § 24 above.

C. Facts with regard to the killing of Anđelko Kostić (case no. 230/09)

30. Mr Anđelko Kostić was killed in his home in Retimlë/Retimlje village on 18 July 1998, during the same armed assault (see § 18 above).
31. The complainant informs the Panel that the death of Mr Anđelko Kostić was confirmed by a certificate issued by the MUP on 22 March 2000, and a death certificate issued by relevant authorities of the Republic of Serbia on 23 October 2002.

D. Facts with regard to the abduction and illegal detention of Angelina Kostić (case no. 111/09), Petra Kostić (case no. 178/09), Slavica Banzić (case no. 254/09), Desanka Banzić (case no. 263/09) and Dragica Božanić (case no. 284/09)

32. On 18 June 1998, Mrs Angelina Kostić and Mrs Petra Kostić were abducted by KLA members from the Retimlë/Retimlje village, while Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić were abducted from the Opterushë/Opteruša village, during the same armed assault by the KLA. They, together with other persons, were detained by the KLA in the monastery "Sveti Vračić" in the Zoqishtë/Zočište village, Rahovec/Orahovac municipality, and later released.

33. Copies of ICRC certificates presented by the complainants indicate that on 22 July 1998 Mrs Angelina Kostić, Mrs Petra Kostić, Mrs Slavica Banzić and Mrs Desanka Banzić were "...handed over to the ICRC in the region of Malisevo by armed persons who identified themselves at that time as members of the KLA".

E. End of UNMIK's responsibility with regard to police and justice

34. 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. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK Department of Justice and UNMIK Police were handed over to their EULEX counterparts.

III. THE COMPLAINTS

A. Concerning the killing of Anđelko Kostić (case no. 230/09), the abduction and killing of Živko Kostić (case no. 117/09), Lazar Kostić (case no. 179/09), Todor Kostić (case no. 180/09), Nebojša Kostić (case no. 231/09), Rajko Nikolić (case no. 240/09), Cvetko Nikolić (case no. 241/09), Spasoje Banzić (case no. 253/09), Mladen Božanić (case no. 284/09) and Nemanja Božanić (case no. 286/09), and with regard to the abduction and probable killing of Mladen Kostić (case no. 232/09)

35. The complainants generally complain about UNMIK's alleged failure to properly investigate the abduction, killing and/or probable killing of their close family members. The complainants in essence also complain about the fear, pain and anguish suffered by themselves because of this situation.
36. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of their relatives, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of their own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

B. Concerning the illegal detention of Angelina Kostić (case no. 111/09), Petra Kostić (case no. 178/09), Slavica Banzić (case no. 254/09), Desanka Banzić (case no. 263/09) and Dragica Božanić (case no. 284/09)

37. The complainants Mrs Petra Kostić (case no. 178/09), Mrs Slavica Banzić (case no. 254/09) and Mrs Dragica Božanić (case no. 284/09) also complain about the alleged failure by UNMIK to investigate into the illegal detention of themselves. In two other cases, the complainants complain about the illegal detention of their relatives: in case no. 111/09 the complainant complains about the illegal detention of his mother, Mrs Angelina Kostić, and in case no. 263/09 the complainant complains about the illegal detention of her mother-in-law, Mrs Slavica Banzić.
38. The Panel considers that these complainants may be deemed to invoke a violation of the right to liberty, guaranteed by Article 5 of the ECHR.

IV. THE COMPLAINTS BROUGHT BY MRS ANGELINA KOSTIĆ (CASES NOS 134/09 AND 259/09)

39. The Panel recalls that the complainant in cases nos 134/09 and 259/09, Mrs Angelina Kostić, passed away during the proceedings before the Panel. No family member expressed the wish to pursue the proceedings before the Panel on her behalf (see § 10 above).
40. In these circumstances, the Panel decides, in accordance with Rule 29 of its Rules of Procedure, to strike the above mentioned cases out of its list of cases.

V. JOINDER OF THE COMPLAINTS

41. The Panel decides, pursuant to Rule 20 of its Rules of Procedure, to join all remaining complaints from the two groups (see §§ 8-9 above).

VI. THE LAW

42. Before considering the cases on their merits, the Panel must first decide whether to accept the cases, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
 - A. Alleged violation of Article 2 of the ECHR, with regard to the killing of Anđelko Kostić (case no. 230/09), the abduction and killing of Živko Kostić (case no. 117/09), Lazar Kostić (case no. 179/09), Todor Kostić (case no. 180/09), Nebojša Kostić (case no. 231/09), Rajko Nikolić (case no. 240/09), Cvetko Nikolić (case no. 241/09), Spasoje Banžić (case no. 253/09), Mladen Božanić (case no. 284/09) and Nemanja Božanić (case no. 286/09), and with regard to the abduction and probable killing of Mladen Kostić (case no. 232/09)**
43. The complainants allege in substance the lack of an adequate criminal investigation into the abduction and killing, abduction and probable killing, or immediate killing of their close relatives.
44. In his comments, the SRSG does not object to the admissibility of this part of the complaints.
45. The Panel considers that the complaints under Article 2 of the ECHR raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaints is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
46. No other ground for declaring this part of the complaints inadmissible has been established.

B. Alleged violation of Article 3 of the ECHR

47. The complainants allege mental pain and suffering allegedly caused to themselves by the situation surrounding the killing or disappearance of their relatives.
48. In this respect, a distinction should be made between three categories of victims: Mr Anđelko Kostić (case no. 230/09), who was instantly killed, the nine victims who were abducted and whose mortal remains were later found and identified, and finally Mr Mladen Kostić (case no. 232/09), who was abducted and whose whereabouts are not known until now.
1. *With regard to the killing of Anđelko Kostić (case no. 230/09)*
49. With regard to the situation of Mr Anđelko Kostić, who was instantly killed, the Panel refers to the case law of the European Court of Human Rights with respect to the question whether a member of the family of a person who has been killed can be considered the victim of a treatment contrary to Article 3 of the ECHR, which prohibits inhuman treatment. While the European Court accepts that a family member of a disappeared person can claim to be the victim of such an ill-treatment, notably in the light of the inability during a prolonged period of time to find out what happened to their relative, it does not usually extend the application of Article 3 of the ECHR to the relatives of a person who has been killed in the case of an instantaneous death (see, e.g., European Court of Human Rights (ECtHR), *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, judgment of 21 June 2007, § 152; ECtHR, *Udayeva and Yusupova v. Russia*, no. 36542/05, judgment of 21 December 2010, § 82; see also Human Rights Advisory Panel (HRAP), *Filipović*, no. 92/09, decision of 11 August 2011, §§ 21-22; HRAP, *Antić*, no. 100/09, decision of 5 April 2012, §§ 19-20).
50. Applying the same principles, and while having no doubts as to the profound suffering caused to the complainant by the death of his father and the return of his mortal remains the following day, the Panel finds no appearance of a violation of Article 3 of the ECHR by UNMIK.
51. It follows that this part of the complaint is manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
2. *With regard to the abduction and killing of Živko Kostić (case no. 117/09), Lazar Kostić (case no. 179/09), Todor Kostić (case no. 180/09), Nebojša Kostić (case no. 231/09), Rajko Nikolić (case no. 240/09), Cvetko Nikolić (case no. 241/09), Spasoje Banzić (case no. 253/09), Mladen Božanić (case no. 284/09) and Nemanja Božanić (case no. 286/09)*
52. With regard to the situation of the victims whose mortal remains have been found and identified, the Panel again refers to the case law of the European Court of Human Rights. As already indicated, the Court accepts that a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR. This may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family

member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries". It also emphasises "that the essence of such a violation does not so much lie in the fact of the disappearance of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention" (see, e.g., ECtHR (Grand Chamber), *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR (Grand Chamber), *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 139; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41, and HRAP *Radisavljević*, no. 156/09, decision of 17 February 2012, § 18).

53. The Panel considers that a complainant may invoke a violation of Article 3 of the ECHR even if there is no explicit reference to specific acts of the authorities involved in the investigation, since also the passivity of the authorities and the absence of information given to the complainant may be indicative of inhuman treatment of the complainant by the authorities (see HRAP, *Mladenović*, no. 99/09, decision of 11 August 2011, § 22; HRAP, *Petković*, no. 133/09, decision of 16 December 2011, § 20).
54. However, where the disappeared person is later found dead, the applicability of Article 3 of the ECHR is in general limited to the distinct period during which the member of the family sustained uncertainty, anguish and distress appertaining to the specific phenomenon of disappearances (see, e.g., ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 114-115, *ECHR*, 2006-XIII; see also ECtHR, *Gongadze v. Ukraine*, no. 34056/02, judgment of 8 November 2005, § 185, *ECHR*, 2005-XI; HRAP, *Petković*, referred to in § 53 above, at § 21).
55. In this respect, the question arises whether the complaints have been filed in time. Section 3.1 of UNMIK Regulation No. 2006/12 states that the Panel "may only deal with a matter ... within a period of six months from the date on which the final decision was taken". As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the complainant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the complainant (ECtHR (Grand Chamber), *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, § 157). Where the complaint relates to a continuing situation, which has come to an end, the six-month time limit starts to run from the date on which the situation has come to an end.
56. The Panel notes that the mortal remains of the nine victims were all returned to their respective families on 13 October 2006. It is at that moment that the period during which an issue could arise under Article 3 of the ECHR, came to an end. For the purpose of Section 3.1 of UNMIK Regulation No. 2006/12, the six-month time limit therefore started to run from that date.
57. The complaints related to the abduction and killing of Živko Kostić (case no. 117/09), Lazar Kostić (case no. 179/09), Todor Kostić (case no. 180/09), Nebojša Kostić (case no. 231/09), Rajko Nikolić (case no. 240/09), Cvetko Nikolić (case no. 241/09), Spasoje Banzić (case no. 253/09), Mladen Božanić (case no. 284/09) and Nemanja Božanić (case no. 286/09) were all filed with the Panel in April 2009, that is after the expiration of the above-referred six-month period.

58. The Panel therefore must conclude that this part of the complaints falls outside the time-limit set by Section 3.1 of UNMIK Regulation No. 2006/12.

3. *With regard to the abduction and probable killing of Mladen Kostić (case no. 232/09)*

59. With regard to the situation of Mr Mladen Kostić, the Panel considers that the analysis presented in §§ 52-53 fully applies to that situation, as the whereabouts of that victim remain unknown.

60. The SRSG argues that while the complainant in this case asserts that he suffered fear, pain and illness as a result of his father's disappearance and probable killing, there is no express allegation that such suffering was a result of UNMIK's response to that situation. The SRSG argues that since the complainant failed to specify the basis for UNMIK's responsibility for the alleged violations, this part of the complaint is manifestly ill-founded.

61. The Panel considers that, despite the lack of express allegations put forward by the complainant in this respect, the complaint sets forth relevant facts upon which the alleged violation of Article 3 of the ECHR may be based.

62. For the reasons stated above, the Panel considers, moreover, that a complainant may invoke a violation of Article 3 of the ECHR even if there is no explicit reference to specific acts of the authorities involved in the investigation (see §§ 52-53 above).

63. The Panel considers that this part of the complaint raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12, and rejects the objection raised by the SRSG.

64. No other ground for declaring this part of the complaint inadmissible has been established.

C. Alleged violation of Article 5 of the ECHR, with regard to the detention of Angelina Kostić (case no. 111/09), Petra Kostić (case no. 178/09), Slavica Banzić (case no. 254/09), Desanka Banzić (case no. 263/09) and Dragica Božanić (case no. 284/09)

65. The complainants allege in substance the lack of a criminal investigation in relation to the illegal detention of Angelina Kostić, Petra Kostić, Slavica Banzić, Desanka Banzić and Dragica Božanić.

66. In his comments, the SRSG argues in the first place that the abduction and the detention of the above-named women which took place in July 1998 do not give rise to any continuing violation of Article 5 of the ECHR. The complaints are therefore outside the Panel's jurisdiction *ratione temporis*.

67. The SRSG further submits that UNMIK cannot be held responsible for the alleged human rights violations by the KLA, as nothing in the complaints indicates any UNMIK involvement in the events under scrutiny. Therefore, the complaints are also outside the Panel's jurisdiction *ratione personae*.

68. With regard to the first objection, the Panel acknowledges that the events that are the object of the complaints took place around a year prior to UNMIK's deployment in Kosovo. At this stage the question arises whether UNMIK, after its arrival, still had an obligation to investigate the circumstances of the abductions and detentions, with a view to identifying the perpetrators and taking action against them.
69. The Panel has already held, with regard to the admissibility of complaints under Article 2 of the ECHR, that the obligation to protect the right to life under Article 2 of the ECHR, read in conjunction with a State's general duty under Article 1 of the ECHR 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 as a result of the use of force. The Panel also considered that such procedural obligation under Article 2 is not confined to cases of active State involvement in a killing, but has a broader autonomous scope (see HRAP, *Canhasi*, no. 04/08, opinion of 12 November 2008, §§ 28-29).
70. The Panel considers that the abductions and detentions complained of *prima facie* constituted deprivations of liberty that were not in conformity with the conditions set forth in Article 5 § 1 of the ECHR. These abductions and detentions took place during a military action against the civilian population. The Panel also notes that the abduction and the killing or probable killing of the male relatives of Angelina Kostić, Petra Kostić, Slavica Banzić, Desanka Banzić and Dragica Božanić took place during the same operation. All the events that took place in Opterushë/Opteruša and Retimlë/Retimlje on 18 July 1998 and in the following days therefore seem to have been part of one large-scale action of a serious criminal nature.
71. The Panel does not see any reason why in these circumstances the duty to investigate serious violations of human rights, already accepted under Article 2 of the ECHR, should not be extended to the alleged violations of the right to liberty, guaranteed under Article 5 of the ECHR. The Panel considers, to the contrary, that UNMIK did have an obligation to investigate the circumstances of the abductions and detentions complained of by the complainants.
72. It is true that in accordance with Section 2 of UNMIK Regulation No. 2006/12, the Panel may only examine 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".
73. In this regard the Panel already held that UNMIK's alleged failure to conduct an effective investigation into an alleged crime can be qualified as a continuing situation (see HRAP, *Zdravković*, case no. 46/08, decision on admissibility of 17 April 2009, §§ 29-32). The Panel therefore considers, specifically, that UNMIK's alleged failure to conduct an effective investigation into the circumstances of abduction and illegal detention of civilians during the KLA operation represents a continuing violation of the victims' rights guaranteed under Article 5 of the ECHR. Insofar as such a situation continued after 23 April 2005, a complaint relating to the alleged failure comes within the Panel's jurisdiction *ratione temporis*.
74. For the above reasons, the Panel rejects the first objection raised by the SRSB

75. With regard to the second objection, the Panel notes that the complainants do not complain about the detentions themselves, but about the insufficiency of the subsequent investigative action undertaken by UNMIK. For the reasons set out above (§§ 68-71), the Panel reiterates that UNMIK did have an obligation to investigate the circumstances of the detentions complained of, notwithstanding the fact that the detentions can be attributable to members of a group not associated with UNMIK.
76. The Panel therefore rejects the second objection raised by the SRSG
77. The Panel further considers that the complaints under Article 5 of the ECHR raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaints is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
78. No other ground for declaring this part of the complaints inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

- DECIDES TO STRIKE OUT CASES NOS 134/09 AND 259/09 OF ITS LIST OF CASES;

- DECLARES ADMISSIBLE THE COMPLAINTS RELATING TO THE RIGHT TO LIFE;

- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO BE FREE FROM INHUMAN OR DEGRADING TREATMENT, WITH REGARD TO MR MLADEN KOSTIĆ (CASE NO. 232/09);

- DECLARES ADMISSIBLE THE COMPLAINTS RELATING TO THE RIGHT TO LIBERTY, WITH REGARD TO MRS ANGELINA KOSTIĆ (CASE NO. 111/09), MRS PETRA KOSTIĆ (CASE NO. 178/09), MRS SLAVICA BANZIĆ (CASE NO. 254/09), MRS DESANKA BANZIĆ (CASE NO. 263/09) AND MRS DRAGICA BOŽANIĆ (CASE NO. 284/09);

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINTS.

Daniel Trup
Acting Executive Officer

Marek NOWICKI
Presiding Member