



## **OPINION**

**Date of adoption: 6 December 2012**

**Case No. 02/09**

**S. C.**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 6 December 2012,  
with the following members present:

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, makes the following findings and recommendations:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was introduced on 15 January 2009 and registered on the same date.
2. On 20 April 2009, the Panel requested further information from the complainant. The complainant responded on 18 May 2009.
3. On 9 June 2009, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG)<sup>1</sup> for UNMIK's comments on the admissibility of the case.

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

4. On 26 August 2009, the Panel received UNMIK's response.
5. On 2 September 2009, the Panel forwarded UNMIK's response to the complainant inviting the complainant to submit further comments if she so wished. The complainant replied to the Panel on 15 September 2009.
6. On 9 September 2010, the Panel declared the complaint admissible. On 16 September 2010 the Panel forwarded its decision to the SRSG requesting UNMIK's comments on the merits of the complaint.
7. On 7 October 2010, the SRSG provided UNMIK's comments.
8. On 5 November 2010, the Panel requested the SRSG to submit files relating to criminal and forensic investigations concerning the case. On 30 November 2010, the SRSG submitted relevant documentation.
9. On 11 November 2012, the Panel requested UNMIK to confirm if the disclosure of files concerning the case could be considered final. Additional documents were submitted by UNMIK on 30 November 2012.

## II. THE FACTS

### A. General background<sup>2</sup>

10. The events at issue took place in the territory of Kosovo after the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK), in June 1999.
11. 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.

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<sup>2</sup> The references drawn upon by the Panel in setting out this general background include: OSCE, "As seen, as Told", Vol. I (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](http://www.unhcr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>).

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

18. 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”.
19. 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.
20. 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.
21. 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 handed over to EULEX.

## **B. Circumstances surrounding the abduction of Mr Ah.C. and Mr An.C.**

22. The complainant, Mrs S.C., is the wife of Ah.C. and the mother of An.C.
23. According to the complainant, on 18 July 1999, Ah.C. and An.C. were at their place of business in Prizren, along with another family member. Three uniformed KLA members arrived and informed them that the KLA commander had ordered some work to be done. At around 11.30 am, Ah.C. and An.C. collected their tools and followed the KLA jeep in their own car in the direction of Gjakovë/Đakovica. The other family member remained at the business premises and the KLA members informed him that Ah.C. and An.C. would return within half an hour.
24. When Ah.C. and An.C. did not return by the time the business was to be closed for the night, the remaining family member returned home and informed the complainant of what had happened. When they still did not return the next morning, the complainant and the other family member went to the KLA headquarters and to UNMIK to look for them, but to no avail.
25. Following this, the complainant reported the disappearances to KFOR, UNMIK, and the ICRC. On 13 December 1999, the complainant also reported the disappearances to the OSCE Office in Prizren.
26. On an unspecified date in 2005, the complainant filed a criminal charge against unknown perpetrators before the International Prosecutor of the District Public Prosecutor's Office (DPPO) in Prizren in relation to the disappearance of her family members.
27. The complainant states that she is not aware if investigations were conducted following her reports. She states that her family was threatened by KLA members not to search further for Ah.C. and An.C, otherwise they too would disappear.
28. The complainant states that she was informed in 2003 that her husband and son had been found dead. In 2003 or 2004 she decided to relocate outside of Kosovo due to threats against her and her family.

## **C. The investigation**

29. In the present case, the Panel received from UNMIK investigation documents previously held by the UNMIK OMPF and UNMIK Police (MPU and WCIU).
30. Concerning disclosure of information contained in the files, the Panel recalls that investigation files have been made available for the Panel's review under a pledge of confidentiality from UNMIK. 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 investigation steps taken by investigative authorities is provided in the paragraphs to follow.
31. According to the complainant, the abduction of Ah.C. and An.C was promptly reported to the KFOR, the ICRC, UNMIK, and the OSCE.

32. On 29 May 2000, the ICRC issued a tracing request concerning the disappearance of Ah.C. and An.C.
33. On 2 August 2000, the OSCE Office in Prizren sent a communication to the OSCE Office in Prishtinë/Priština requesting a follow-up with UNMIK Police on the status of the investigation concerning the disappearance of the complainant's family members. According to the note, the case had been transferred to the CCIU of UNMIK Police in Prishtinë/Priština. The complainant had requested information from the ICRC in Prizren saying that she had not received any feed-back from the authorities.
34. In a follow-up, the OSCE in Prishtinë/Priština was informed that the MPU of the UNMIK Police had opened a file on the matter, but had not been able to collect additional information on the case. The documents analysed by the Panel show that the case was assigned a first MPU case file number in 2000 and a different one in 2001.
35. On 10 August 2000, the mortal remains of two unidentified bodies were located by investigators from the International Criminal Tribunal for the former Yugoslavia (ICTY) in a grave site nearby the Prizren cemetery. A note of the investigators stated that the bodies were "of interest" to the ICTY. According to reports dated 31 August 2000, the ICTY conducted an autopsy on the two bodies on 24 August 2000. The autopsy concluded that the two unidentified male victims had died due to multiple gunshot wounds.
36. On 29 January 2002, ante-mortem victim identification forms on Ah.C. and An.C. were completed by the ICRC and forwarded to UNMIK.
37. On 26 December 2002, the Regional Investigation Unit (RIU) in Prizren forwarded to the MPU in Prishtinë/Priština a list of abduction cases, reportedly under investigation, including the cases of Ah.C. and An.C. The memo also contains a request to the MPU to share information or investigation records they might have on the cases.
38. According to reports dated 27 January and 30 January 2003, the ICMP compared samples of DNA from the bodies located on 10 August 2000 with DNA samples from Ah.C. and An.C.'s family members. The reports concluded that they were matching.
39. On 18 February 2003, based on the results of the DNA analysis and on the comparison of ante-mortem and post-mortem information, the UNMIK OMPF issued confirmation of identity certificates concerning Ah.C. and An.C.
40. By letter dated 3 March 2003, UNMIK MPU ordered the exhumation of two unidentified graves from the cemetery of Suharekë/Suva Reka, as well as for the transportation of the bodies to the Dragodan cemetery in Prishtinë/Priština.
41. On 6 March 2003, Mr M. C., who is the son of Ah.C and the brother of An.C., received the bodies of his father and brother. Mr M. C. asked investigators to leave with him the responsibility of informing the complainant of the death of Ah.C. and An.C., stating that the complainant had recently suffered from a heart attack.
42. The complainant states that she was informed in 2003 of the death of her husband and son.

43. On an unspecified date before March 2005, a criminal report against unknown perpetrators was filed by the Serbian authorities on behalf of the complainant before the International Prosecutor of the DPPO in Prizren. In the report, the complainant stated that the disappearance had been reported on the same date to KFOR, which probably had an official note to that effect. The complainant also requested that her allegations be verified and possible witnesses be interviewed. However, there is no indication that the file was ever reviewed or that any action was undertaken by the Public Prosecutor's Office.
44. On 13 March 2005, the Prizren RIU submitted to the WCIU a list of killing and abduction cases for their review. The list included the cases of Ah.C. and An.C. with no indication of any action having been recently taken.
45. On 9 April 2005, the case concerning the disappearance and killing of Ah.C. and An.C.'s was registered by the WCIU. The case report lists the case as inactive and states that Ah.C. and An.C. were still missing.
46. On 20 October 2007, the case was reviewed by the UNMIK WCIU. The case analysis report indicates that no statement had been taken thus far from witnesses and again states that Ah.C. and An.C. were still missing. The reviewing investigator stated that no evidence was noted and recommended that the case be closed until further evidence was obtained.
47. The case was reviewed by another WCIU officer on 27 December 2007. Again Ah.C. and An.C. were reported as still missing. The investigator recommended the case remain inactive pending new information.

### **III. THE COMPLAINT**

48. The complainant complains about UNMIK's alleged failure to properly investigate the abduction and killing of her husband and son. In this regard the Panel deems that she invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
49. The complainant also complains about the mental pain and suffering allegedly caused to herself and her family by this situation. In this regard, the Panel deems that the complainant relies on Article 3 of the ECHR.

### **IV. THE LAW**

#### **A. The scope of the Panel's review**

50. 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 ECHR Article 2. Second, as in a limited number of cases before the European

Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses for the first time the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.

51. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
52. 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.
53. 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 complainant complains about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
54. 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 (§ 52). 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.
55. 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 [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2011, § 136, ECHR 2001-IV).

## **B. Alleged violation of the procedural obligation under Article 2 of the ECHR**

### **Admissibility**

56. As regards the alleged violation of Article 2 of the ECHR, in his comments on the merits of 7 October 2010, the SRSG first objects that an investigation into the matter is still on-going. For this reason, the Panel shall declare the case inadmissible due to non-exhaustion of remedies pursuant to Section 3.1 of UNMIK Regulation No. 2006/12.
57. In this regard, the Panel notes that the SRSG has not indicated any specific legal remedy available to the complainant with regard to the effectiveness of the investigation itself. For its part, the Panel does not see any such remedy. The fact that the matter is currently under investigation has no bearing on the object of the complaint: the effectiveness of the investigation itself (see Human Rights Advisory Panel (HRAP), *D.P.*, case no. 04/09, decision of 6 August 2010).
58. The objection of the SRSG is therefore dismissed and the complaint under Article 2 is declared admissible.

### **Merits**

#### **1. The Parties' Submissions**

59. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the abduction and killing of her husband and son. The complainant also states that she was not informed as to whether an investigation was conducted and what the outcome was.
60. The complainant states that since the disappearance of her husband and son, her life and the life of her family has been "miserable" and "desperate". The complainant states that she suffered a heart attack and, after being informed that her family members had been killed, she went into a coma for a certain time. She asks to be compensated for her suffering.
61. The SRSG notes in his comments dated 7 October 2010 that, following the handover to EULEX in December 2008, all investigative files held by UNMIK were handed over to EULEX (see §§ 20-21 above). Since then UNMIK is dependent on EULEX to provide information on matters "involving police or justice investigations".
62. The SRSG states that in this case UNMIK has been able to obtain from EULEX copies of "some documents which were held by the former Office on Missing Persons and Forensics", "some documents that were handed over to EULEX War Crimes Investigation Unit in late 2008" and an update on the case by EULEX. The SRSG states that "the information UNMIK relies upon may be incomplete". However, additional documents were provided by UNMIK on 30 November 2012.

63. In his comments on the merits of the complaint, the SRSG agrees that by virtue of the United Nations Security Council Resolution 1244 (1999), UNMIK was responsible for the security and safety of persons living in Kosovo. UNMIK's policing responsibility entailed that "UNMIK had a mandate to protect people in Kosovo against criminal activities and to conduct effective investigations into crimes". Therefore, the SRSG acknowledges that UNMIK had an obligation to carry out an effective investigation into the disappearance and killing of Ah.C. and An.C., as prescribed by Article 2 of the ECHR.
64. However, the SRSG objects that the form and extent of the investigation required to achieve the purpose of Article 2 of the ECHR shall depend upon the circumstances of the specific case. In this regard, the SRSG recalls the judgment of 18 May 2000 rendered by the European Court of Human Rights in the case *Velikova v. Bulgaria* stating at paragraph 80:
- “ [...] the nature and degree of scrutiny which satisfy the minimum threshold of the investigations effectiveness depends on the circumstances of the particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. It is not possible to reduce the variety of investigation work to a bare check-list of acts of investigation or other simplified criteria.”
65. The SRSG is of the view that notwithstanding UNMIK's responsibility for policing, “special circumstances” affecting UNMIK's ability to investigate crimes, in particular in the initial phase of its mission, must also be acknowledged.
66. In particular, it shall be taken into account that during the initial phase of its mission, UNMIK could not rely on a functioning police apparatus or on specialised personnel who were able to investigate into all committed crimes. The SRSG states that the international police force of UNMIK was very slow to deploy. By mid-September 1999 UNMIK had approximately 1,100 international police officers on the ground, while a proper police structure, including a system of criminal investigation units throughout Kosovo, was established only in the following months. In the meantime, the police were required to perform multiple tasks, from investigation of crimes, maintaining law and order, to policing traffic and other tasks.
67. The SRSG states that another circumstance to take into account in assessing the effectiveness of the investigation in the present case is the fact that the abduction of the complainant's husband and son occurred when the crime rate in Kosovo was “at its highest”, that is in June 1999, after the NATO bombing. According to the SRSG, during the years 1999 and 2000 UNMIK received hundreds of reports on disappearances and killings of Kosovo Serbs which were particularly challenging to investigate due to the limited resources as well as to a lack of leads, such as in the present case.
68. As the UN does not have a police standing police force on its own and has to rely on contributions of forces from UN member States, UNMIK had no control over the recruitment of international police officers, who often had insufficient experience in investigating crimes with an inter-ethnic aspect in a post-conflict context. Similarly the rotation of police officers, who were assigned only for periods of six months to one or two years, hampered the continuity of investigation.

69. For these reasons, the SRSB argues “the standards set by the European Court of Human Rights for an effective investigation cannot be the same for UNMIK as for a State with a functioning, well organized police apparatus in place and with police officers it can recruit, select and train”.
70. Furthermore, the SRSB is of the view that an effective investigation was carried out by UNMIK Police in relation to the disappearance of Ah.C. and An.C. However, “due to minimal information and leads available, no concrete results could be achieved”.

## **2. The Panel’s assessment**

### *a) Submission of relevant files*

71. The SRSB observes that the case file submitted to the Panel concerning the investigation into the case of Ah.C. and An.C. could be incomplete.
72. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSB 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, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005, § 56).
73. The Panel notes that UNMIK was requested on at least three occasions to submit relevant documents in relation to the case. In response to the latest request from the Panel, on 30 November 2012, UNMIK stated that the disclosure of files concerning the case could be considered final.
74. The Panel also 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. The Panel likewise notes that UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
75. 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*

76. The complainant states that UNMIK failed to conduct an effective investigation into the disappearance and killing of her husband and son.
77. 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 (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.

78. In order to address the complainant’s allegations, the Panel refers to the well-established case law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, Reports 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).
79. 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 § 55 above, at § 136).
80. 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).
81. Setting out the standards of an effective investigation, the Court has stated that “beside being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is

capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC], *Varnava and Others v. Turkey*, cited above § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 80 above, at § 312, and *Isayeva v. Russia*, cited in § 81 above, at § 212).

82. 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 above, § 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).
83. 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 § 81 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 55 above, at § 148). 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 in § 81 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, at § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 64).
84. 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 § 81 above, at §§ 311-314; *Isayeva v. Russia*, cited 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).

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

85. The Panel is conscious that the abduction and killing of Ah.C. and An.C. occurred shortly after the deployment of UNMIK in Kosovo in the immediate aftermath of the armed conflict, when crime, violence and insecurity were rife.
86. On his part, the SRSB does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSB, 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 SRSB argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
87. The Panel considers that the SRSB's arguments raise two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, secondly, whether such standards shall be considered fully applicable to UNMIK, in particular during the first phase of its mission.
88. 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, *Milgorić and Others*, nos. 38/08, 58/08, 61/08, 63/08, 69/08, 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).
89. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court on Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 81 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. United Kingdom*, cited in § 84 above, at § 164; see also ECtHR, *Güleç v. Turkey*, no. 21593/93, judgment of 27 July 1998, § 81, Reports of Judgments and Decisions 1998-IV; ECtHR, *Ergi v. Turkey*, no. 23818/94, judgment of 28 July 1998, §§ 79 and 82, Reports 1998-IV; ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 80 above, at §§ 85-90, 309-320 and 326-330; ECtHR, *Isayeva v. Russia*, cited in § 80 above, at §§ 180 and 210; and ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
90. The Court has acknowledged that "where the death [and disappearances] to be investigated under Article 2 occur in circumstances of generalised violence, armed

conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited § 84 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, *Kaya v. Turkey*, cited in § 78 above, at §§ 86-92; *Ergi v. Turkey*, cited § 89 above, §§ 82-85; *Tanrikulu v. Turkey* [GC], no. 23763/94, judgment of 8 July 1999, §§ 101-110; *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; *Isayeva v. Turkey*, cited in § 81 above, at §§ 215-224; *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, judgment of 26 July 2007, §§ 158-165).

91. 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 § 77 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, communication no. 1447/2006, views of 2 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 CCPR 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).
92. 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). 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 § 18 above).
93. 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 ECHR, *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.

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

94. The SRSB states that an effective investigation was carried out in relation to the abduction and killing of Ah.C. and An.C.; however, due to minimal information and available leads, no concrete results could be achieved.
95. The complainant states that her husband and son's abduction was reported promptly to the KFOR, ICRC and UNMIK. Lacking specific documentation in this regard, the Panel considers that UNMIK became aware of Ah.C. and An.C.'s abduction at the latest in August 2000. At this date, tracing requests had been issued by the ICRC and an investigation had been opened by the MPU of UNMIK Police.
96. The Panel notes that there were obvious shortcomings in the conduct of the investigation from its inception. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 55), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 81 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 § 20 above).
97. The Panel notes that, from the registration of the case until January 2002, apparently no action whatsoever aimed at establishing the whereabouts of the complainant's family members or to identify those responsible for their disappearance was undertaken by UNMIK Police. No statement was ever taken from the complainant, witnesses to the abduction, or from other family members. No efforts were made to search for evidence (i.e. the victims' car) or to follow obvious lines of enquiry (i.e. KLA commanders in the area of Prizren). During 2002, the only step taken by UNMIK was the registration of ante-mortem information concerning Ah.C. and An.C., which had been gathered by the ICRC. Between January and March 2003, the MPU succeeded in identifying the bodies of Ah.C. and An.C., which had been previously discovered and analysed by the ICTY, and handed over to the family. Although this must be considered in itself an achievement, the Panel recalls that the procedural obligation under Article 2 did not come to an end with the discovery of the bodies, especially as they showed signs of a violent death. The Panel notes that this was a moment of renewed contact with the family. Nonetheless, no further investigative action was carried out to identify the perpetrators until a criminal report from Serbia prompted the registration of the case with the WCIU of UNMIK Police and its review in April 2005.
98. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that basic investigative steps, such as interviewing the complainant and witnesses to the abduction, had not yet been carried out. In addition, the Panel considers that, as those responsible for the crime had not been located, UNMIK was obligated to use the means at its disposal to regularly review the progress of the



investigation to ensure that no new facts had come to light, as well as to inform the relatives of Ah.C. and An.C regarding any possible new leads of enquiry. The Panel notes that the case, which in the meantime had been classified as “inactive” pending new information, was further reviewed in October and November 2007 respectively. However, the Panel deems that both reviews were far from being adequate. In fact, the reviewing investigators did not identify the evident gaps in the investigation thus far and mistakenly reported that Ah.C. and An.C. were still missing (see §§ 45-47 above).

99. The Panel therefore considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK to identify the perpetrators and to bring them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 81 above), as required by Article 2.
100. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victim's next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
101. The complainant states that she received no feedback from UNMIK on the investigation concerning her husband and son. The Panel notes that, according to the information submitted to the Panel, the complainant's family (her son) was contacted only once by UNMIK, with respect to the handover of the bodies of Ah.C. and An.C. in 2003. As the Panel has already noted, no statement was ever taken from the complainant and no information was given to her concerning the status of the investigation, including that the case had been classified in 2005 as “inactive”. The Panel therefore considers that the investigation was not accessible to the complainant's family as required by Article 2.
102. In light of the deficiencies and shortcomings as described above, the Panel concludes that UNMIK failed to carry out an adequate and effective investigation into the abduction and killing of the complainant's husband and son. There has been accordingly a violation of Article 2, procedural limb, of the ECHR.

### **C. Alleged Violation of Article 3 of the ECHR**

103. The complainant states that the lack of information and uncertainty surrounding the disappearance and killing of her husband and son caused mental suffering to herself and her family. The Panel deems that the complainant may be deemed to invoke a violation of Article 3 of the ECHR prohibiting inhuman and degrading treatment.
104. The SRSB does not make further submissions with specific reference to the alleged violation of Article 3 of the ECHR.
105. In its decision of 9 September 2010, the Panel declared the complaint admissible. Nevertheless, the Panel has to reassess the admissibility of this part of the complaint, in light of subsequent developments in the Panel's case law concerning the admissibility of complaints under Article 3 of the ECHR.
106. In particular, the Panel notes that according to the case law of the European Court of Human Rights a member of the family of a disappeared person can under certain conditions be considered the victim of treatment by the authorities contrary to Article 3 of the ECHR, which prohibits inhuman treatment. Where the disappeared person is

later found dead, the applicability of Article 3 is in principle limited to the distinct period during which the member of the family sustained the 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 (extracts); see also ECtHR, *Gongadze v. Ukraine*, no. 34056/02, judgment of 8 November 2005, § 185, ECHR 2005-XI).

107. In the present case, the relevant period lasted until 6 March 2003 when the mortal remains of Ah.C. and An.C. were handed over to the complainant's family.
108. The Panel has already recalled that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only 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".
109. The Panel has no doubts as to the profound suffering caused to the complainant by the disappearance and death of her relatives. Nevertheless, the Panel must conclude that this part of the complaints lies outside its jurisdiction *ratione temporis* (see HRAP, *Patrnogić*, no. 252/09, decision of 16 December 2011, §§ 16-20) and for this reason shall be declared inadmissible.

## V. CONCLUDING COMMENTS AND RECOMMENDATIONS

110. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
111. The Panel notes that enforced disappearances and arbitrary killings constitute serious violations of human rights which the competent authorities are under an obligation to investigate and to bring perpetrators to justice under all circumstances. The Panel also notes that pursuant to United Nations Security Council Resolution 1244 (1999) UNMIK from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute the disappearance and killing of Ah.C. and An.C., and that its failure to do so constitutes a further serious violation of the human rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
112. 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.
113. 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 § 20) 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.

114. 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 it appropriate that UNMIK:**

- In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilașcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, § 333, ECHR 2004-VII; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04 and others, 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 Ah.C. and An.C. 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 Ah.C. and An.C. and makes a public apology to the complainant and her 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 as stated above.

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

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

**FOR THESE REASONS,**

The Panel, unanimously,

- 1. FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
- 2. FINDS THAT THE COMPLAINT UNDER ARTICLE 3 IS INADMISSIBLE;**
- 3. RECOMMENDS THAT UNMIK:**
  - a. URGES EULEX AND OTHER COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE DISAPPEARANCE AND KILLING OF THE COMPLAINANT'S FAMILY MEMBERS 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 THE COMPLAINANT'S FAMILY MEMBERS AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT AND HER FAMILY;**
  - c. TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANT FOR MORAL DAMAGE;**
  - 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  
**ICCPR** – 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  
**GC** – Grand Chamber of the European Court of Human Rights  
**FRY** - Federal Republic of Yugoslavia  
**HRAP** - Human Rights Advisory Panel  
**HRC** - United Nations Human Rights Committee  
**IACtHR** - Inter-American Court of Human Rights  
**ICMP** - International Commission of Missing Persons  
**ICRC** - International Committee of the Red Cross  
**ICTY** - International Criminal Tribunal for former Yugoslavia  
**KFOR** - International Security Force (commonly known as Kosovo Force)  
**KLA** - Kosovo Liberation Army  
**MoU** - Memorandum of Understanding  
**MPU** - Missing Persons Unit  
**NATO** - North Atlantic Treaty Organization  
**OMPF** - Office on Missing Persons and Forensics  
**OSCE** - Organization for Security and Cooperation in Europe  
**RIU** - Regional Investigation Unit  
**SRSg** - Special Representative of the Secretary-General  
**UN** - United Nations  
**UNHCR** - United Nations High Commissioner for Refugees  
**UNMIK** - United Nations Interim Administration Mission in Kosovo  
**VRIC** - Victim Recovery and Identification Commission  
**WCIU** - War Crimes Investigation Unit