



# *The Human Rights Advisory Panel*

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## **OPINION**

**Date of adoption: 6 June 2013**

**Case Nos. 06/09 & 55/09**

**S.P. and V. Đ.**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 6 June 2013,  
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 of Mrs S.P. (case no. 06/09) was introduced on 20 January 2009 and registered on 23 January 2009. The complaint of Mrs V. Đ. (case no. 55/09) was introduced on 31 March 2009 and registered on 17 April 2009.
2. On 4 May 2009, the Panel communicated case no. 06/09 to the Special Representative of the Secretary-General (SRSG)<sup>1</sup> for UNMIK's comments on the admissibility and the merits 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.

3. On 24 July 2009, the Panel communicated case no. 55/09 to the SRSG for UNMIK's comments on the admissibility and the merits of the case.
4. On 5 August 2009 and on 17 August 2009, the SRSG provided UNMIK's responses for case no. 55/09 and for case no. 06/09 respectively.
5. On 26 August 2009, the Panel requested further information from the complainant in case no. 06/09. The complainant responded on 25 September 2009.
6. On 10 March 2010, the Panel requested further information from the complainant in case no. 55/09. The complainant responded on 10 August 2010.
7. On 9 September 2010, the Panel decided to join cases nos. 06/09 and 55/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
8. On 2 November 2010, the Panel re-communicated cases nos. 06/09 and 55/09 to the SRSG for UNMIK's comments on the admissibility of the cases in light of the decision to join the cases. On 28 February 2011, the SRSG provided UNMIK's response.
9. On 13 April 2011, the Panel declared the complaints admissible.
10. On 18 April 2011, the Panel communicated the decision on admissibility to the SRSG and requested UNMIK's comments on the merits of the cases. On 14 May 2011, the SRSG provided UNMIK's response.
11. On 29 April 2013, the Panel requested UNMIK to confirm whether the disclosures of files concerning the cases could be considered final. On 2 May 2013, the SRSG provided UNMIK's response.

## II. THE FACTS

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

12. 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.
13. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO)

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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>).

announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a “Military Technical Agreement” by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council resolution.

14. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to “promote and protect human rights” in Kosovo in accordance with internationally recognised human rights standards.
15. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
16. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbs, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
17. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
18. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to

work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.

19. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.
20. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being “well-functioning” and “sustainable”.
21. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. As of June 2002, the newly established OMPF in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
22. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with 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.
23. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30

March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were handed over to EULEX.

**B. Circumstances surrounding the abduction and probable killing of Mr D.P. and Mr Ms. Đ.**

24. The first complainant (case no. 06/09) is the wife of Mr D.P. The second complainant (case no. 55/09) is the wife of Mr Ms.Đ. The complainants state that their husbands went missing in the village of Nerodime e Poshtme/DonjeNerodimlje village, Ferizaj/Uroševac Municipality, between 16 June and 25 June 1999. Their whereabouts remain unknown to date.
25. In her submission to the Panel of September 2009, the first complainant states that on 17 June 1999, about one hundred KLA members entered Nerodime e Poshtme/DonjeNerodimlje village. At about 14:00, five armed KLA members entered the first complainant's home and took Mr D.P. to the village of Balaj/Balic, three kilometres away from Nerodime e Poshtme/DonjeNerodimlje. After questioning Mr D.P. in a private house, they told him that he was free to leave. However, another group of KLA soldiers was waiting for Mr D.P. to come out into the hall. They forced him into another room, where they started to beat him. The complainant states that, after a particularly heavy blow, Mr D.P.'s nose began to bleed, and that KLA soldiers forced him to lick his own blood off the floor while cursing his family.
26. The first complainant further states that she was in her yard when her husband returned home, covered in blood and bruises. She was unable to take Mr D.P. to any doctor, since there was none in the village. She could not report the case to any authorities at that moment, since neither UNMIK nor KFOR was yet present in the village and the telephone lines were not functioning. On this occasion, Mr D.P. related the information concerning his treatment to his wife.
27. At approximately 16:00, a different group of three KLA members went to the first complainant's home and told Mr D.P. to go with them to give a statement to their commander. Mr D.P. was reportedly taken to an abandoned house in Nerodime e Poshtme/DonjeNerodimlje village. Here, they swore at him and threatened him by shooting bullets in the air. About twenty minutes later, they released Mr D.P., who returned home.
28. Another hour passed and at about 17:00, the same group of KLA members who had taken Mr D.P. to Balaj/Balic village for questioning the first time returned and took Mr D.P. with them again. Since that day, 17 June 1999, the whereabouts of Mr D.P. have remained unknown.
29. The first complainant states that two or three days later, on 19 June or 20 June 1999, at around 23:00, a KFOR patrol entered the village of Nerodime e Poshtme/DonjeNerodimlje while several houses of Kosovo Serbs were set on fire. When a KFOR patrol stopped by her house, she attempted to inform them of her husband's abduction. However, she was threatened not to do so by KLA members stationed in front of her house. Ten minutes later, the KFOR patrol left the village.
30. The first complainant further states that she remained in the village for six/seven more days and that, during this time, the two brothers Ms.Đ. and Md. Đ. were also kidnapped. On 24 or 25 June 1999, groups of fifteen KLA members went to each of the remaining Serb

homes in the village and informed the occupants that they had two hours in which to leave if they did not want to be killed. As a result, the first complainant left the village along with other villagers and went to Ferizaj/Uroševac. They allegedly approached a group of UNMIK Police officers standing in front of the municipal building and informed them of the abduction of three men from the village, Mr D.P., Mr Ms.Đ. and Mr Md.Đ., respectively. These officers directed the first complainant to UNMIK Police stationed on the outskirts of town, where she reported the abductions and requested an escort to Çagllavicë/Čaglavica village, Prishtinë/Priština Municipality. Once in Çagllavicë/Čaglavica, the first complainant also reported the abduction to a KFOR contingent there. The complainant states that since then she has received no information about her husband's fate.

31. The second complainant states that on 20 June 1999, she had left the village of Nerodime e Poshtme/DonjeNerodimlje, while her husband, Mr Ms.Đ., had remained behind. According to the information provided by her brother-in-law who had remained also in the village, in the evening of 20 June 1999, Mr Ms. Đ. was approached by unknown persons who asked him to join them for an “informative” interview. They indicated to other persons present that he would be allowed to return home after the interview was over. Just afterwards, Mr Md.Đ., another brother of Mr Ms.Đ., was also allegedly asked to accompany unknown individuals for an “informative interview”. Although the complainant limits her complaint to the disappearance of her husband, Mr Ms.Đ., it appears that the whereabouts of both Mr Ms.Đ. and Mr Md.Đ. have remained unknown since that time.
32. The second complainant states that, on 21 June 1999, a group of persons came to her brother-in-law's home and told him to leave within a limited period of time, otherwise he would be killed. When the brother-in-law asked about the fate of his brothers, Mr Ms.Đ. and Mr Md.Đ., they told him that they had left his brothers somewhere. The complainant further states that the brother-in-law allegedly recognised two named persons from a neighbouring village amongst this group.
33. The second complainant indicates that she reported the disappearance of her husband to UNMIK Police, KFOR, ICRC and other “international offices” in Prishtinë/Priština. She states that they never addressed any prosecutor or court in relation to the abduction of her husband, as they deemed “UNMIK Police should have done so” upon the collection of evidence.
34. On 23 August 1999, the ICRC opened a tracing request for Mr D.P. indicating 17 July 1999 as the date of his disappearance. On 31 July 2001, an ICRC tracing request was also issued for Mr Ms.Đ. which indicates that his whereabouts have been unknown since 19 July 1999. The name of Mr D.P. also appears in a list of missing persons communicated by the ICRC to UNMIK on 12 October 2001 and in the database compiled by the UNMIK OMPF. The name of Mr Ms. Đ. appears in the OMPF database.
35. The entries on the online list of missing persons maintained by the ICMP with respect to Mr D.P. and Mr Ms.Đ. read, in relevant parts “sufficient reference samples collected” and “DNA match not found”<sup>3</sup>.

### C. The investigation

<sup>3</sup> The database is available at: [www.ic-mp.org/fdmsweb/index.php?w=mp\\_details&l=en](http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en) (accessed on 5 June 2013).

*a) Disclosure of relevant files*

36. With regard to the case of Mr D.P., the Panel received from UNMIK investigative documents previously held by the UNMIK Police (MPU, WCIU and CCIU), as well as documents held by the EULEX Special Prosecution Office and a Case Analysis Report by the EULEX WCIU. As regards the case of Mr Ms.Đ., the Panel received investigative files previously held by the MPU and WCIU of UNMIK Police and a Case Analysis Report of the EULEX War Crimes Investigation Unit.
37. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made available investigation files for the Panel's review under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of steps taken by investigative authorities is provided in the paragraphs to follow.

*b) The investigation concerning the abduction of Mr D.P.*

38. On 9 March 2003, the UNMIK MPU opened a missing person file with respect to Mr D.P.'s abduction (case file no. 2003-00032). On the same date, the MPU recorded in the UNMIK Police database the ante-mortem data on Mr D.P. as collected from the first complainant by the ICRC. The victim identification form for Mr D.P. indicates the address of the first complainant in Serbia and also contains information that Mr Ms. and Mr M.Đ. had disappeared in the course of the same events as Mr D.P. Likewise, an MPU victim identification form for Mr Md.Đ., dated 25 January 2002, is included in the investigative file concerning Mr D.P. In this form it is stated that on 16 June 1999, Mr Md.Đ. was abducted in the presence of his family members and taken to Balaj/Balic village on the order of a named KLA commander.
39. Between 30 December 2004 and 22 January 2005, the case of Mr D.P. was reviewed by the WCIU/Missing Person Section of UNMIK Police. A WCIU report indicates that Mr D.P. was abducted on 25 July 1999 and that the status of the case at that moment was "inactive". The investigators reviewing the case indicated the first complainant as the only eye-witness to the event; however they stated that they did not have any phone number to contact her. They also stated that the only statement available thus far was the one given by the first complainant to the Humanitarian Law Centre. According to the investigators, it was further "known" "from other internet resources" that the name of Mr D.P. "was on the list of Serbs killed in Kosovo from June to December 1999". The investigators concluded that there was no information available on the possible location of Mr D.P. or of his mortal remains. Therefore the case should remain "open inactive" with the WCIU.
40. A CCIU document dated 18 August 2005 indicates that a criminal file concerning Mr D.P.'s abduction was also opened by the CCIU of UNMIK Police in that year, following criminal charges pressed on an unspecified date by the first complainant with the District Public Prosecutor's Office in Prishtinë/Priština. In this criminal report, which indicates 25 July 1999 as the date of Mr D.P.'s abduction, the first complainant stated that the KLA group responsible for her husband's abduction was led by a named KLA commander, the same person indicated in § 38 above, from Balaj/Balic village. The first complainant also claimed in the criminal report that the "information on measures that have been taken to trace down the missing person and the perpetrators [...] have been completely inaccessible

to the injured party”. There is no evidence that any follow-up action was carried out by UNMIK Police following the criminal complaint.

41. On 16 June 2009, a EULEX prosecutor of the Special Prosecutor’s Office requested the EULEX War Crimes Investigation Unit to conduct an investigation against a named KLA commander from Balaj/Balic village (the same person as in §§38 and 40 above) as the main suspect in the case concerning the abduction of Mr D.P. The prosecutor requested interviews to be conducted with the ICRC, KFOR, the complainant, potential witnesses and suspects. On 2 July 2010, the EULEX WCIU reviewed the case stating that the “solvability” of the case was good if eye-witnesses were able to identify the perpetrators. The investigators further noted that it appeared that the same perpetrators had committed other crimes during the relevant time, including “the systematic pillaging in the area, as well as homicides”.

*c) The investigation concerning the disappearance of Mr Ms.Đ.*

42. It appears that missing person files concerning Mr Ms.Đ. and his brother Mr Md.Đ., were opened by the UNMIK MPU firstly in 2000 (case file no. 2000-00080 and 2000-00165 respectively). It also appears that the abductions of the two brothers were to a certain extent investigated jointly.
43. On 31 October 2000, the UNMIK Police MPU in Graçanicë/Gračanica completed a “Missing Persons Form” and “Case Continuation Report” for each brother, based on the information provided by the victims’ younger brother, Mr S.Đ. The latter had stated that, on 20 June 1999 at 14:00, a named Albanian man went to their house and warned them all to leave. Later, at around 23:00, five “Albanians” wearing KLA uniforms went to the house and forced Mr Ms.Đ. and Mr Md.Đ. to go with them in a yellow Zastava vehicle. Among the kidnappers were two named KLA members, one being the same named KLA commander mentioned in §§38, 40 and 41 above. Mr S.Đ. was told that his brothers would be back in one hour. However, he had not heard anything about them since that time. The MPU “Case Continuation Report” for Mr Ms.Đ. also states that his wife knew the kidnappers, as they lived nearby, and that the investigators had gathered information from the internet that the two brothers had been killed.
44. On 19 July 2001, UNMIK Police recorded the statement of a witness. He stated that one year earlier, probably in July 2000, he had been arrested by KLA members, brought to a “jail” located in a school building in the village of Balaj/Balic, and there subjected to interrogations and beatings for several days. The witness stated that in this “jail” he had first met Mr D.P., who, he learnt, was later killed. The witness stated that he also found Mr Ms.Đ. and Mr Md.Đ. detained there. The witness had been eventually released thanks to the intervention of a named Albanian neighbour, close to the KLA.
45. The investigative file concerning Mr Ms. Đ. includes a letter from the Ministry of Internal Affairs of the Republic of Serbia to KFOR and UNMIK Police dated 5 September 2001, which contained information on crimes committed against ethnic-Serbs in Kosovo. The letter states that Mr D.P. and the two brothers were kidnapped on the order of five named KLA commanders from Manastirc/Manastirce village, that they were taken to Balaj/Balic village and questioned there by another named KLA commander. Mr D.P. and Mr Md.Đ. had been killed shortly afterwards, while Mr Ms.Đ. had been taken to work in the fields in Balaj/Balic village and killed some time later, in about August 2001.



46. By interoffice memorandum dated 11 December 2001, a human rights officer of the UNMIK Bureau for Detainees and Missing Persons requested the UNMIK MPU to follow-up on the disappearance of Mr Ms.Đ. and Mr Md.Đ. According to the memo, Mr Ms.Đ.'s wife, who was at that time living in Preoc/Preoce village, Prishtinë/Priština Municipality, was available to provide ante-mortem data and pictures of Mr Ms.Đ. and that an appointment with her had been scheduled to that effect for 14 December 2001. As for Mr Md.Đ., the memo stated that his wife was residing in Serbia proper and ante-mortem data would be gathered by the ICRC "with the usual procedure in place". On the same 11 December 2001, this information was transmitted by the UNMIK Bureau for Detainees and Missing Persons to the CCIU of UNMIK Police. The note specified that both the nephew, Mr I.Đ., and the younger brother, Mr S.Đ., of the victims, had seen the perpetrators and were "ready to testify and sign for it". Their contact details and phone numbers were also provided.
47. It appears that the case concerning Mr Ms.Đ. was reviewed in 2005 by the UNMIK WCIU. In an "Anti-Mortem Investigation Report" dated 2 February 2005, the investigators stated that the witness, Mr S.Đ., had been interviewed by phone. Although there is no witness statement attached to this report, the investigators provide in the report a summary of the information received from Mr S. Đ., that his brothers had been abducted on the order of a named KLA commander (the same as §§ 38, 40 and 41 above). The investigators concluded that the "witness does not have any new information" and that it was "impossible at that time to find an impartial witness". Also, there was no information possibly leading to the location of the missing person and for this reason, the case should remain "open pending" with the WCIU.
48. A EULEX "Case Analysis Report" dated 15 December 2010 stated that, although the incident concerning Mr Ms.Đ. had occurred within the time-frame for warcrimes, there was no indication that it had been "passed to" and/or "processed by" the EULEX WCIU or Special Prosecution Office.

### **III. THE COMPLAINTS**

49. The complainants complain about UNMIK's alleged failure to properly investigate the abduction and probable killing of their respective husbands. In this regard the Panel deems that they invoke a violation of the procedural limb of Article 2 of the ECHR.
50. They also complain about the mental pain and suffering allegedly caused to themselves and their families by this situation. In this regard the Panel deems that the complainants rely on Article 3 of the ECHR.

### **IV. THE LAW**

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

51. The Panel considers that the complainants invoke a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR in that UNMIK Police did not conduct an effective investigation into their respective husbands' abduction and probable killing.

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

52. In determining whether it considers that there has been a violation of Article 2 (procedural limb) of the ECHR, the Panel is mindful of the existing case law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses for the first time the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.
53. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
54. 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.
55. 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.
56. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above (see § 53). 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.

57. 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, *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).

## **2. The parties’ submissions**

58. The complainants in substance allege violations concerning the lack of an adequate investigation into the abduction and probable killing of their respective husbands. They also state that they were not informed as to whether an investigation was conducted and what the outcome was.

59. Concerning the merits of both complaints under Article 2, the SRSG does not contest the obligation of the relevant authorities to carry out an effective investigation in cases of unlawful killings and deaths. However, according to the SRSG, the form and the extent of such investigation shall depend on the circumstances of the specific case. In this regard, the SRSG states that the “activities required from the authorities in a functional state differ from those in post-conflict environment where there are no fully functional authorities and an international interim administration is designed to build up administrative and judicial structures and institutions”.

60. The SRSG further states that, notwithstanding the Panel’s decision of 9 September 2010 to join the two complaints pursuant to Rule 20 of the Panel’s Rules of Procedure (see § 7 above), UNMIK’s comments are provided separately for each case due, in the opinion of the SRSG, to “significant discrepancies in both matters with regard to the date of the disappearance, the surrounding circumstances of the disappearance and the information and documentation available on both matters”.

61. As regards the abduction and probable killing of Mr D.P. (case no. 06/09), the SRSG refers in his comments dated 13 May 2011 to the documentation produced by EULEX in relation to the case. He states that UNMIK was able to obtain “updated information” from EULEX Police and in particular the EULEX Special Prosecutor’s Office. According to this information, a new round of investigations was ordered by the responsible EULEX prosecutor in 2009.

62. Turning to the circumstances of this case, the SRSG states that the documentation available indicates that the UNMIK Police MPU registered the matter in 2003 and that it made attempts to contact the first complainant, the only eye-witness to the abduction. However, they could not reach her since no telephone number had been provided. According to the SRSG, in these circumstances it was therefore impossible to commence a proper investigation. The SRSG therefore argues that, having considered also the unique circumstances prevailing in Kosovo in the aftermath of the conflict and during the first years of UNMIK’s deployment, UNMIK Police “did all investigation it could into the matter taking into account the minimal information available and provided by the

complainant”. For these reasons, the complaint under Article 2 of the ECHR appears without grounds.

63. As regards the abduction and probable killing of Mr Ms.Đ. (case no. 55/09), the SRSG states at the outset that UNMIK was able to obtain only copies of some documents which were previously held by the former UNMIK OMPF and that, despite several attempts, “UNMIK was not able to retrieve more documents from UNMIK Police or EULEX Police”. The SRSG states that, therefore, UNMIK’s comments on the merits are based exclusively on the information provided by the complaint and the OMPF documents, and that the latter, however, relate mostly to the abduction of the brother of the complainant’s husband, Mr Md.Đ.
64. With regard to the merits of the complaint under Article 2 of the ECHR, the SRSG states that in the case concerning the abduction and probable killing of Mr Ms.Đ., a missing person file was opened by the UNMIK Police MPU in 2000, and acknowledges that “some leads were available to commence police investigations into the matter”, including the names of possible perpetrators as provided by the complainant and by the communication of the Ministry of Internal Affairs of the Republic of Serbia, dated 5 September 2005. The SRSG also acknowledges that there subsequently was no other information by UNMIK Police besides the report of 2 February 2005, stating that the witness did not have any new information. He notes that this report does not state “whether any attempts were made to locate or interview the possible perpetrators”. However, the SRSG argues that “this omission could have been due to a lack of information passed on to the appropriate offices but also due to a mere lack of investigation”. For this reason, “UNMIK is not in a position to comment appropriately on the merits of the matter”.

### **3. The Panel’s assessment**

#### *a) Submission of relevant files*

65. The SRSG provided the Panel with copies of all available investigative and other relevant documents on 14 May 2011. However, in his comments, the SRSG suggests that there is a possibility that additional documents related to these cases may exist (see §§63-64 above).
66. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilekv. Turkey*, no. 27693/95, judgment of 31 May 2005, § 56).
67. The Panel also 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 29 April 2013, UNMIK stated that the disclosure of files concerning the case from UNMIK’s side could be considered final.
68. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigation to their handing over, is crucial to the continuation of such investigations and could thus raise *per se* issues

under Article 2. 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.

69. 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*

70. First, the Panel considers that the limited content of the investigative files, in particular in the light of the SRSG's argument that, for this reason, it is not possible to ascertain whether there was a failure by UNMIK to conduct an effective investigation into the case of Mr Ms.Đ. (case no. 55/09), raises issues of the burden of proof. In this regard, the Panel refers to the approach of the European Court on Human Rights as well as of the United Nations Human Rights Committee (HRC) on the matter. The general rule is that it is for the party who asserts a proposition of fact to prove it, but that this is not a rigid rule.

71. Following this general rule, at the admissibility stage an applicant must present facts, which are supportive of the allegations of the State's responsibility, that is, to establish a *prima facie* case against the authorities (see, *mutatis mutandis*, ECtHR, *Artico v. Italy*, no. 6694/74, judgment of 13 May 1980, §§ 29-30, Series A no. 37; ECtHR, *Toğcu v. Turkey*, no. 27601/95, judgment of 31 May 2005, § 95). However, the European Court further holds that "... where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities ... The burden of proof may then be regarded as resting on the authorities to provide a satisfactory and convincing explanation" (see ECtHR [GC], *Varnava and Others v Turkey*, cited above in § 56, at §§ 183-184).

72. The European Court also states that "... it is for the Government either to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred, failing which an issue under Article 2 and/or Article 3 of the Convention will arise" (see ECtHR, *Akkum and Others v. Turkey*, no. 21894/93, judgment of 24 June 2005, § 211, ECHR 2005-II (extracts)). The Court adds that "... [i]f they [the authorities] then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn" (see ECtHR, *Varnava and Others v Turkey* [GC], cited above in § 56, at § 184; see also, HRC, *Benaniza v Algeria*, Views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; HRC, *Bashasha v. Libyan Arab Jamahiriya*, Views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008).

73. The Panel understands that the international jurisprudence has developed in a context where the Government in question may be involved in the substantive allegations, which is not the case with UNMIK. The Panel nevertheless considers that since the documentation was under the exclusive control of UNMIK authorities, at least until the handover to EULEX, the principle that "strong inferences" may be drawn from lack of documentation is applicable.

74. Second, the Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American

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

75. In order to address the complainants’ allegations, the Panel refers, in particular, to the well-established case law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, Reports 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).
76. 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 § 57 above, at § 136).
77. 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).
78. Setting out the standards of an effective investigation, the Court has stated that “beside being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so,

to the identification and punishment of those responsible (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 56 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *AhmetÖzkan and Others v. Turkey*, cited above, at § 312; and *Isayeva v. Russia*, cited above, at § 212).

79. In particular, the investigation's conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 75 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigative work (see ECtHR, *Velcea and Mazărev. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
80. 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 § 78 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 57 above, at § 148, *Aslakhanova and Others v. Russia*, nos. 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation "does not come to an end even on discovery of the body ... This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain" (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 57 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).
81. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *AhmetÖzkan and Others*, cited in § 77 above, at §§ 311-314; ECtHR, *Isayeva v. Russia*, cited in § 77 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011).

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

82. The Panel is conscious that the abduction of Mr D.P. and MrMs.D. occurred shortly after the deployment of UNMIK in Kosovo in the immediate aftermath of the armed conflict, when crime, violence and insecurity were rife.
83. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present cases under Article 2 of the ECHR. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK's deployment in the first phase of its mission shall be taken into account when assessing whether these investigations are in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
84. The Panel considers that the SRSG's arguments raise two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, secondly, whether such standards shall be considered fully applicable to UNMIK, in particular during the first phase of its mission.
85. As regards the applicability of Article 2 to UNMIK, the Panel recalls that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under certain international human rights instruments, including the ECHR. In this respect, the Panel has already found that it is true that UNMIK's interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK's mandate (see HRAP, *Milogorić and Others*, nos. 38/08 and others, opinion of 24 March 2011, § 44; *Berisha and Others*, nos. 27/08 and others, opinion of 23 February 2011, § 25; *Lalić and Others*, nos. 09/08 and others, opinion of 9 June 2012, § 22).
86. 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 § 78 above, and ECtHR, *Jularić v. Croatia*, no. 20106/06, judgment of 20 January 2011). The Court has further held that that the procedural obligation under Article 2 continues to apply in "difficult security conditions, including in a context of armed conflict" (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited in § 81 above, at § 164; see also ECtHR, *Güleç v. Turkey*, judgment of 27 July 1998, § 81, Reports 1998-IV; ECtHR, *Ergi v. Turkey*, cited in § 86 above, at §§ 79 and 82, Reports 1998-IV; ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 77 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 77 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
87. The Court has acknowledged that "where the death [and disappearances] to be investigated under Article 2 occur in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed" (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited above, at § 164; ECtHR, *Bazorkina v. Russia*, cited in § 87 above, at § 121).



Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 75 above, at §§ 86-92; ECtHR, *Ergiv. Turkey*, cited above, at §§ 82-85; ECtHR [GC], *Tanrikulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, at §§ 215-224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).

88. 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 § 73 above, at § 1; HRC, *AbubakarAmirov and AizanAmirova v. Russian Federation*, 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
89. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan*, no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 20above).
90. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel thus agrees with the SRSG that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all

reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.

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

91. As the Panel has already stated, the SRSG states that an effective investigation was carried out in relation to the abduction of Mr D.P.; however, due to minimal information available, no results could be achieved. Concerning the abduction of Mr Ms.Đ., the SRSG in essence states that, from the documentation contained in the investigative file, it is not possible to establish whether some apparent gaps in the investigation are attributable to a failure of the relevant offices to pass on and record the information, or rather to a mere lack of investigation. For this reason, he is not in a position to provide comments as to whether UNMIK conducted an effective investigation in this case.
92. In this regard, the Panel first addresses the issue of the burden of proof. At the admissibility stage, the Panel was satisfied that the complainants' allegations were not groundless, thus it accepted the existence of a *prima facie* case: that both Mr D.P. and Mr Ms.Đ. disappeared in life threatening circumstances and that UNMIK had become aware of their abduction at the latest on 23 August 1999 with respect to Mr D.P. and on 13 November 2000 with respect to Mr Ms. Đ. (see §§34 and 38 above).
93. Accordingly, applying the principles discussed above (see §§ 70-73), the Panel considers that the burden of proof has shifted to the respondent, so that it is for UNMIK to present the Panel with evidence of an adequate investigation as a defence against the allegations put forward by the complainant and accepted by the Panel as admissible. UNMIK has not discharged its obligation in this regard, as it has neither presented a complete investigative file, nor has it in a "satisfactory and convincing" way explained its failure to do so. Accordingly, the Panel will draw inferences from this situation.
94. The Panel notes that according to the 2000 Annual Report of UNMIK Police, at least from mid-September 1999 the whole system of criminal investigation in Prishtinë/Priština region was under the full control of UNMIK. Therefore, it was UNMIK's responsibility to ensure, first, that the investigation is conducted expeditiously and efficiently; second, that all relevant investigative material is properly handed over to the authority taking over responsibility for investigation (EULEX, see § 23 above); and third, that the investigative files could be traced and retrieved, should a need arise at any later stage.
95. The Panel infers from the limited content of the investigative file that one of the following situations occurred: no investigation was carried out; UNMIK deliberately opted not to present the file to the Panel, despite its obligation to cooperate with the Panel and to provide it with the necessary assistance, including the release of documents relevant to the complaints under Section 15 of UNMIK Regulation No. 2006/12 (cited in § 66 above); the file was not properly handed over to EULEX; or UNMIK failed to retrieve the file from the current custodian.
96. The Panel has already noted above that it has no reason to doubt UNMIK's good faith in seeking to provide the investigative file for the Panel's review. However, the Panel considers that whichever of these potential explanations is applicable, it indicates a failure, which is directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.

97. The Panel notes that there were obvious shortcomings in the conduct of the investigations since their inception, having in mind that the initial stage of the investigation is of the utmost importance. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 57), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigations 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 § 78 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see §§ 22-23 above).
98. With regard to Mr D.P., the Panel notes that a missing person file was opened by the UNMIK MPU only in March 2003, two years after UNMIK had become aware of the matter, with no explanation for this delay. Moreover, it appears that from that time until 23 April 2005, the only steps undertaken by UNMIK Police were, in March 2003, the recording in the MPU database of the ante-mortem data previously gathered by the ICRC and a review of the case in January 2005. In particular, the Panel notes that no statement was ever taken from the complainant, as eye-witness to the abduction, or from other potential witnesses. In this regard, UNMIK investigators reviewing the case stated that no phone number was provided to reach the complainant. The Panel notes, however, that there is no indication that any genuine attempt was ever made to locate her, for example at her address in Serbia, indicated in the case file, or through the ICRC.
99. Moreover, the Panel notes that at the latest by 19 July 2001, the UNMIK Police MPU was, or ought to have been, aware that Mr D.P. had been abducted in similar circumstances and probably by the same perpetrators as Mr Ms.Đ. and his brother. Indeed, information establishing a connection between the cases is contained in a witness statement, dated 19 July 2001 (see § 44 above), in the letter of the Ministry of Internal Affairs of the Republic of Serbia, dated 5 September 2001, as well as in the MPU victim identification form for Mr Md.Đ., included in Mr Ms.Đ.'s case file, dated 25 January 2002 (see §38 above). The Panel further notes that, at the time of reviewing the file in January 2005, UNMIK had already been presented with documentation concerning the abduction of Mr Ms.Đ. and his brother which contained also information and investigative leads (name of alleged perpetrators, names of witnesses, indication of place of detention), with respect to Mr D.P.'s abduction. However, it appears that none of these leads was ever followed-upon by the UNMIK Police.
100. Concerning specifically the investigation into Mr Ms.Đ.'s abduction, the Panel notes that some investigative steps were taken by UNMIK Police in 2000 and 2001, including opening a missing person file, gathering information from the victim's younger brother (although no formal statement in this regard can be found in the investigative file), and taking the statement of a witness allegedly detained with the victim(s). However, there is no indication in the investigative file that the investigative leads provided by the above-mentioned witnesses, such as those concerning the possible identity of the perpetrators, named potential witnesses from the village, possible place of detention and probable killing, were ever followed up. Approximately 4 years later, in February 2005, these failures were ignored by the investigators reviewing the case, who stated that no new information was available to enable proceeding further with the investigation of the case. The Panel also notes that, although at this time a connection had been established between the abductions of Mr D.P., Mr Ms.Đ. and Mr Md.Đ., no efforts were made to follow what appeared a common obvious line of enquiry, apparently leading to the KLA structures in the area.

101. Coming to the period within its jurisdiction, the Panel notes that these basic investigative steps and follow-ups had not yet been carried out, such as locating and formally interviewing the complainants and other eye-witnesses to the abduction, locating and interviewing those individuals consistently indicated by different witnesses as the potential perpetrators, locating and inspecting the prison in which the victims were allegedly detained and the surrounding areas in order to search for traces of the victims or of their bodies. After that critical date the failure to conduct the necessary investigative actions persisted, thus, in accordance with the continuing obligation to investigate (see § 80 above), bringing the assessment of the whole investigation within the period of the Panel's jurisdiction. Further, the Panel notes that, as of August 2005, the Prishtinë/Priština District Public Prosecutor and UNMIK Police CCIU had been presented with a criminal report from the first complainant, providing, one more time, the name of the alleged perpetrator for her husband's abduction (the same KLA commander indicated in §§ 38, 40 and 41 above). However, there is no evidence in the file that any investigative actions were carried out following this report.
102. 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 nothing had been overlooked and any new evidence had been considered, as well as to inform the relatives of Mr D.P. and Mr Ms.Đ. regarding any possible new leads of enquiry. However, there is no indication that any such review was ever undertaken after January/February 2005.
103. The apparent lack of any adequate reaction from UNMIK Police may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
104. The Panel therefore considers that, having regard to all the circumstances of the particular case, no steps appear to have been taken by UNMIK to clarify the circumstances of Mr D.P. and Mr Ms.Đ.'s abduction and probable killing and bring the perpetrators 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 § 78 above), as required by Article 2.
105. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires that in all cases the victim's next-of-kin must be involved in the investigation to the extent necessary to safeguard his or her legitimate interests (see ECtHR [GC], *Tahsin Acar v. Turkey*, no. 26307/95, judgment of 8 April 2004, § 226, ECHR 2004-III; ECtHR, *Taniş v. Turkey*, no. 65899/01, judgment of 2 August 2005, § 204, ECHR 2005-VIII).
106. In this regard, the complainants claim that they were never informed about the steps taken by the investigators. The Panel notes that no formal statement was ever taken from either complainant and no information was given to them concerning the status of the investigation. The Panel also notes that in the above-mentioned criminal report the first complainant expressly complained about the lack of feed-back on the investigation. The Panel understands the complainants' view that the extent of the information received was

unsatisfactory. The Panel therefore considers that the investigations were not accessible to the complainants' families as required by Article 2.

107. 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 probable killing of the complainants' husbands. There has been accordingly a violation of Article 2 of the ECHR under its procedural limb.

## **B. Alleged violation of Article 3 of the ECHR**

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

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

109. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 52-57 above).

110. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, "the essence of such a violation does not so much lie in the fact of the 'disappearance' of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention" (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, cited in § 57 above, at § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 87 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 78 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41). "It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct" (see, among others, ECtHR, *Er and Others v. Turkey*, no. 23016/04, judgment of 31 July 2012, § 94).

111. Lastly, where mental suffering caused by the authorities' reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (ECtHR, *Gelayev v. Russia*, no. 20216/07, cited in § 11 above, at §§ 147-148).

### **2. The Parties' submissions**

112. The complainants allege that the lack of information and certainty surrounding the abduction and probable killing of their husbands, particularly because of UNMIK's failure to properly investigate their abductions, caused mental suffering to themselves and their families. In particular, the first complainant states that two of her daughters and she herself became ill due to the stress following their father and husband's abduction. The second complainant states that, because of the uncertainty as to the fate of their beloved one, she and her son have been suffering "immense mental pain" and "living in fear".

113. In his observations on the merits of 13 May 2011, the SRSB states that it is unclear "what act/s and/or omission/s by UNMIK are alleged to have resulted in a breach of Article 3, ECHR ... [and] ... what element of Article 3 is alleged to have been breached". The SRSB

believes that such clarification is necessary in order for him to provide a meaningful and complete response on the merits of the case. Pending that clarification, the SRSG reserved his rights to comment on the alleged violation of Article 3 of the ECHR, and urges the Panel not to make a determination on the merits of the complaint until UNMIK's comments are received.

114. Considering this objection of the SRSG, the Panel notes that in his later comments related to Article 3 of the ECHR, in relation to other cases, the SRSG provided his elaborated position on the issue. This clearly indicates that the nature of these allegations was fully understood by the SRSG (see: HRAP, *Jočić*, no. 34/09, opinion of 23 April 2013, §§ 99-100, HRAP, *Tomanović*, nos 248/09, 250/09 and 251/09, opinion of 25 April 2013, §§ 90-91).
115. Therefore, the Panel considers that no additional clarification is needed at this stage and proceeds with an examination of the merits of this aspect of the complaint.

### **3. The Panel's assessment**

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

116. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (ECtHR, *TalatTepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
117. Setting out the general principles applicable to situations where violations of the obligation under Article 3 of the ECHR are alleged, the Panel notes that the phenomenon of disappearance constitutes a complex form of human rights violation that must be understood and confronted in an integral fashion (see IACtHR, *Velasquez Rodriguez v. Honduras*, cited in § 74 above, at § 150).
118. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died.
119. The HRC has also recognised disappearances as a serious violation of human rights. In its decision of 21 July 1983, in the case *Quinteros v. Uruguay*, it stated that disappearances constitute serious violations of the rights of the disappeared person's relatives, who suffer from deep anguish which persists for as long as the uncertainty concerning the fate of their loved one continues, often for many years (see HRC, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990), § 14). Moreover, in its decision of 15 July 1994 in the case *Mojica v. Dominican Republic*, the HRC has deemed that "the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 [of the Covenant]", also prohibiting torture, inhumane or degrading treatment and punishment (see HRC, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).

120. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (see ECtHR, *Baysayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Er and Others v. Turkey*, cited in § 109 above, at § 94).
121. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey*, cited in § 109 above, at § 96; ECtHR, *Osmanoğlu v. Turkey*, no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine*, no. 28005/08, judgment of 14 March 2013, § 201).
122. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya*, Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaziza v. Algeria*, cited in § 71 above, at § 10), grandchildren (*ibid.*) and even cousins (*Bashasha v. Libyan Arab Jamahiriya*, cited in § 71 above, at § 7.5). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (...), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have lead to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee

considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated" (HRC, *AbubakarAmirov and AïzanAmirova v. Russian Federation* cited in § 88 above, at § 11.7).

123. The Panel also takes into account that the European Court of Human Rights has determined that its analysis of the authorities' reaction is "not confined to any specific manifestation of the authorities' attitudes, isolated incidents or procedural acts; on the contrary, the Court gives a global and continuous assessment of the way in which the authorities of the respondent State responded to the applicants' enquiries" (see ECtHR, *Janowiec and Others v. Russia*, nos. 55508/07 and 29520/09, judgment of 16 April 2012, § 152).
124. In this respect, it is the position of the European Court that findings under the procedural limb of Article 2 would also be of direct relevance in considering the existence of a violation of Article 3 (see ECtHR, *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 109; ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, § 147; ECtHR, *Bazorkina v. Russia*, cited in § 87 above, at § 140).
125. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117-118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107-110). However, in contrast, in the case under the Panel's consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant's mental distress caused by the commission of the crime itself.
126. The Panel is mindful that in the absence of a finding of State responsibility for the disappearance, the European Court has ruled that it is not persuaded that the authorities' conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity, which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among others, ECtHR, *Tovsultanova v. Russia*, no. 26974/06, judgment of 17 June 2010, § 104; ECtHR, *Shafiyeva v. Russia*, no. 49379/09, judgment of 3 May 2012, § 103).
127. Finally, with regard to the issue of burden of proof, the Panel refers to what it has said under Article 2 (see above, §§ 70-73).
128. Taking note of that position, the Panel considers that in this situation it may draw strong inferences from the available established facts relevant to the complaints before it.

*b) Applicability of Article 3 to the Kosovo context*

129. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 82-90).
130. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as consider the special



vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 20above).

131. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaints before it, considering the particular circumstances of the case.
132. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.

*c) Compliance with Article 3 in the present cases*

133. Against this background, the Panel discerns a number of factors in the present cases which, taken together, raise the question of violation of Article 3 of the ECHR.
134. The Panel notes the proximity of the family ties between the complainants and the victims, being the first complainant the wife of Mr D.P. and the second complainant the wife of Mr Ms.Đ. Further, the Panel notes that Mr D.P. was abducted in front of his wife, the first complainant, and Mr Ms.Đ. were abducted in front of his family members and they were also threatened by the abductors. Accordingly, the Panel has no doubt that the complainants indeed have suffered serious emotional distress since their husbands’ abduction which took place in June 1999. They reported as soon as they could the abductions to the authorities and gave them all the information available to them, including the names of those allegedly responsible for the abductions.
135. The Panel also notes that both complainants have undertaken their own actions to search for their husbands. They applied to various bodies with enquiries but despite their attempts, they have never received any explanation or information as to what became of their husbands following their abduction. Concerning the case of Mr D.P., the Panel notes that the ante-mortem data included in the file was collected from the complainant through the ICRC and that she was never contacted by UNMIK Police. With regard to the case of Mr Ms.Đ., the Panel notes that the second complainant had confirmed her availability to the UNMIK Bureau for Detainees and Missing Persons in order to provide a statement and ante-mortem data (see § 46 above); however there is no indication in the file that this was consequently done by the UNMIK Police.
136. The Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in its entirety. As was shown with respect to Article 2, the file as presented provides no details of any communication between UNMIK investigative authorities and the complainants from the time of the filing of the initial report of the abduction.
137. Drawing inferences from UNMIK’s failure to submit the complete investigative documents (§ 73 above) or to provide another plausible explanation for the absence of contact with the complainants, or information about the criminal investigation into the abduction of Mr D.P. and Mr Ms.Đ., the Panel considers that this situation, which

continued into the period of the Panel's temporal jurisdiction, caused grave uncertainty about the fate of the complainants' husbands and the status of the investigation.

138. The Panel further notes that both Mr D.P. and Mr Ms.Đ. are still missing. In view of the above, the Panel concludes that the complainants suffered severe distress and for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with their complaints and as a result of their inability to find out what happened to their husbands. In this respect, it is obvious that, in any situation, the pain of a wife who has to live in uncertainty about the fate of her disappeared husband must be unbearable.
139. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the complainants' distress and mental suffering in violation of Article 3 of the ECHR.

## **V. CONCLUDING COMMENTS AND RECOMMENDATIONS**

140. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
141. The Panel notes that enforced disappearances and arbitrary executions constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for the abduction and probable killing of Mr D.P. and MrMs.Đ., and that its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
142. 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.
143. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 22), UNMIK's responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
144. 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], *Ilaşcu and Others v. Moldova and Russia*, cited in § 116 above, at § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the diplomatic means available to it *vis-à-vis* EULEX and the Kosovo authorities, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and probable killing of Mr D.P. and MrMs.Đ. 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 abduction and probable killing of Mr D.P. and MrMs.Đ., as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainants and their family in this regard;

- Takes appropriate steps towards payment of adequate compensation to the complainants for the moral damage suffered due to UNMIK's failure to conduct an effective investigation, as well as for distress and mental suffering incurred by the complainants as a consequence of UNMIK's behavior.

**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 THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
- 3. RECOMMENDS THAT UNMIK:**
  - a. URGES EULEX AND OTHER COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND PROBABLE KILLING OF THE COMPLAINANTS' HUSBANDS IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
  - b. PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND PROBABLE KILLING OF THE COMPLAINANTS' HUSBANDS, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS AND THEIR FAMILY;**
  - c. TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION OF THE COMPLAINANTS FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR.**
  - d. TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
  - e. TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
  - f. TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey ANTONOV  
Officer

MarekNOWICKI Executive  
Presiding Member

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit  
**DOJ** - Department of Justice  
**ECHR** - European Convention on Human Rights  
**ECtHR** - European Court of Human Rights  
**EU** - European Union  
**EULEX** - European Union Rule of Law Mission in Kosovo  
**FRY** - Federal Republic of Yugoslavia  
**GC** - Grand Chamber of the European Court of Human Rights  
**HRAP** - Human Rights Advisory Panel  
**HRC** - United Nations Human Rights Committee  
**IACtHR** - Inter-American Court of Human Rights  
**ICCPR** - International Covenant on Civil and Political 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  
**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