



The Human Rights Advisory Panel

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OPINION

Date of adoption: 31 July 2013

Cases Nos 221/09, 273/09 and 336/09

Slobodanka SPASIĆ, Jagodinka ĐOKIĆ and Cveta NEDELJKOVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 31 July 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 Slobodanka Spasić (case no. 221/09) was introduced on 8 April 2009; the complaint of Mrs Jagodinka Đokić (case no. 273/09) was introduced on 3 April 2009; the complaint of Mrs Cveta Nedeljković (case no. 336/09) was introduced on an unspecified date in April 2009. All complaints were registered on 30 April 2009.
2. On 23 December 2009, the Panel requested Mrs Spasić and Mrs Đokić to provide additional information. Mrs Đokić replied by a letter dated 20 January 2010, while Mrs Spasić did not respond.

3. On 29 April 2010, the Panel communicated the complaint of Mrs Spasić to the Special Representative of the Secretary-General (SRSG)¹, for UNMIK's comments on admissibility and merits. The SRSG submitted UNMIK's response on 31 May 2010.
4. On 9 September 2010, the Panel decided to join all mentioned complaints pursuant to Rule 20 of the Panel's Rules of Procedure.
5. On 10 November 2010, the Panel requested Mrs Nedeljković to provide additional information. The complainant did not avail herself of that opportunity.
6. On 14 March 2012, all complaints were communicated to the SRSG, for UNMIK's comments on their admissibility. The SRSG submitted UNMIK's response on 16 April 2012.
7. On 9 June 2012, the Panel declared the joined complaints admissible.
8. On 13 June 2012, the Panel forwarded its decision to the SRSG requesting UNMIK's comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
9. On 4 October 2012, UNMIK provided to the Panel the investigative files relevant to the case.
10. On 4 July 2013, the SRSG provided UNMIK's response on the merits of the case, together with additional investigative files obtained to date.

II. THE FACTS

A. General background²

11. 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.
12. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force

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

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

(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.

13. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244/1999, the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the Special Representative of the Secretary-General (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.
14. 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.
15. 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.
16. 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.
17. 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 (KPS). By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.

18. 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.
19. 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”.
20. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
21. 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.
22. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were handed over to EULEX.

B. Circumstances surrounding the abduction of Mr Veljko Spasić and Mr Vladimir Đokić

23. Mrs Slobodanka Spasić is the wife, and Mrs Cveta Nedeljković the sister, of Mr Veljko Spasić; Mrs Jagodinka Đokić is the wife of Mr Vladimir Đokić.
24. Mrs Spasić and Mrs Nedeljković both state that Mr Spasić disappeared on 18 June 1999, after he left his workplace in Obiliq/Obilić going towards Prishtinë/Priština, in his vehicle. Mrs Đokić adds that Mr Đokić also left Obiliq/Obilić with Mr Spasić. In Prishtinë/Priština they stopped near Mr Đokić's apartment, where they were abducted by armed members of the KLA. Their whereabouts have remained unknown since that time.
25. Mrs Spasić and Mrs Đokić also state that they reported the abduction of their husbands to KFOR, the ICRC, the Yugoslav Red Cross, and an UNMIK International Public Prosecutor in Prishtinë/Priština. The abduction of Mr Đokić was also reported to the Serbian Ministry of Internal Affairs (MUP), which is confirmed by a certificate issued on 19 August 2004 by an MUP office for Prishtinë/Priština district, then displaced in Niška Banja, Serbia proper. Mrs Đokić also furnished the Panel with a copy of her criminal report to an International Public Prosecutor at the District Public Prosecutor's Office (DPPO) in Prishtinë/Priština, which bears no "received" stamp by a post office or a Prosecutor's Office. Mrs Nedeljković provides no information as to reporting of the abduction to any authorities.
26. The ICRC tracing requests for both victims remain open.³ However, the online ICRC database has 20 June 1999 as the date of the last news about Mr Spasić. The names of both missing persons likewise appear in the lists of missing persons for whom the ICRC collected the ante-mortem data, which was communicated by the ICRC to UNMIK Police on 12 October 2001 and 11 February 2002, as well as in the database compiled by the OMPF. The entries in the online list of missing persons maintained by the ICMP with regard to both persons read, in relevant parts: "Sufficient Reference Samples Collected" and "DNA match not found".⁴

C. The Investigation

1) Disclosure of relevant files

27. On 4 October 2012 and 4 July 2013, UNMIK presented to the Panel the documents which were previously held by the OMPF and the UNMIK Police MPU and WCIU. It was indicated to the Panel, that because all the files were handed over to EULEX (see §§ 21 - 22 above), UNMIK is dependent on EULEX "to provide information any given matter before the HRAP that involves Police or Justice investigations" and that "there is a possibility that additional information exists, beyond the [presented] documents."
28. Concerning disclosure of information contained in the files, the Panel recalls that investigation files have been made available for the Panel's review under a pledge of confidentiality from UNMIK. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of

³Source: <http://www.familylinks.icrc.org/eng/missing-kosovo> (accessed on 31 July 2013).

⁴The database is available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en (accessed on 31 July 2013).

relevant investigation steps taken by investigative authorities is provided in the paragraphs to follow.

a. With regard to Mr Spasić

29. The investigative files contains a fax dated 12 February 2000, originating from UNMIK Police station in Shterpce/Štrpce, addressed to UNMIK Police Regional Headquarters (RHQ) in Prishtinë/Priština, reads that on 9 February 2000 Mr Spasić's brother-in-law reported his disappearance in June 1999. The fax requested any possible information with regard to Mr Spasić. The MPU Case Continuation Report (CCR) states that the MPU received the above-mentioned information from Shterpce/Štrpce police station on 14 February 2000.
30. On 15 February 2000, the MPU sent a request for information with regard to Mr Spasić to all UNMIK Police RHQs, the CCIU, the UNMIK Border and Boundary Police Headquarters, KFOR and OSCE. There are responses to this request from UNMIK Police RHQ in Gjilan/Gnjilane, UNMIK Police Regional Investigation Units for Pejë/Peć, and Prizren, as well as from the Prishtinë/Priština Regional Intelligence Unit and the Border and Boundary Police, indicating that that their records search had given negative results.
31. An entry, dated 17 February 2000, in the above-referred CCR shows that the case was registered, assigned a number and the information was entered into a database.
32. On 26 February 2000, the CCIU replied to the MPU, confirming that they had a registered case with regard to Mr Spasić's abduction, but that it was "inactive".
33. On 10 July 2000, MPU officers interviewed the father of Mr Veljko Spasić and collected the ante-mortem information necessary for identification. His statement is not included in the file, but summarised in a police report. As appears from that report, he stated that his son with two friends went to Prishtinë/Priština on 19 June 1999, because one of those friends wanted to go to Serbia. As nothing was heard of Mr Veljko Spasić after that, the wife of the missing person went to look for him. She got to their apartment in Prishtinë/Priština, where she saw two empty coffee cups on the table. Outside of the apartment she allegedly spoke with a Kosovo Albanian woman, who told her that she had seen Mr Spasić and another person (probably Mr Đokić) getting into a vehicle and that when she asked them where they were heading to, they said "to Serbia". The name of that Kosovo Albanian woman is also not provided. The father also informed police that around four months before the date of this interview, he was told by a Kosovo Albanian man known to him that his son was alive and was being held in an illegal detention centre.
34. On 26 April 2001, the mentioned ante-mortem information was transferred into an MPU's Victim's Identification Form.
35. An MPU Weekly Activity Report, dated 20 April 2002, states that Mr Spasić's mother came to the MPU Resource Center in Graçanicë/Gračanica and requested a certificate confirming that her son was missing since 19 June 1999. There is no indication that her statement was collected.
36. A printout from the MPU database dated 29 June 2004 with regard to Mr Spasić's abduction reads in relevant fields "There is a lack of information in the file".

37. An MPU's Ante-Mortem Report, dated 30 June 2004, indicates that on that date an MPU officer telephoned Mrs Slobodanka Spasić, who said that the family had no more information about his fate since they reported his abduction and that the family had provided blood samples. Her full contact details are in this report. The case is recommended to remain "pending".
 38. The latest document in the file is a printout from the MPU database, dated 11 July 2004, which reflects the information with respect to the contact with the victim's family.
- b. With regard to Mr Đokić*
39. The MPU CCR with respect to the abduction of Mr Đokić, dated 17 June 2002, states that the relevant database entry were made.
 40. An undated, manually filled-in, ICRC Victim's Identification Form with regard to Mr Đokić, is present in the file; his photograph and a copy of his health book are attached to that form. Another Victim's Identification Form, dated 30 November 2004, reflects the same information. It, however, mentions the "Association of Families of Kidnapped and MPs" and the "ICRC – Belgrade" in the field "police officer". Both forms carry the names and contact addresses of Mr Đokić's wife and brother.
 41. An MPU's Ante-Mortem Report, dated 19 December 2004, reflects the results of the case review by an MPU officer. It presents information about a contact with Mr Đokić's wife, who told the investigator that she suspected the current illegal occupant of their apartment in Prishtinë/Priština to be somehow connected to the abduction of her husband. However, the investigating officer failed to locate the apartment and interview the occupant "because most of the names of streets and roads are changed in pristine" [*sic*]. This part of the report ends with a statement that the case requires more investigation. Further down in the same form, the same officer concluded that "No witness available at this moment to be interviewed", that "[a]fter investigations, it's impossible to find an impartial witness" and that there was no information leading to a possible location of Mr Đokić. However, the investigator recommended the case to remain pending in the WCIU.
 42. A translation of Mrs Đokić's criminal report to an International Public Prosecutor in Prishtinë/Priština is also in the file. It is undated, but a note at the bottom indicates that it was translated by a DOJ interpreter on 2 February 2005. The complaint is related to the kidnapping of both Mr Spasić and Mr Đokić; it provides the same details of their abduction, as well as the description and the registration number of the car they had allegedly travelled in, which also disappeared. A WCIU case number is hand-written on top of this document.
 43. A WCIU case analysis report dated 5 September 2008 reflects the results of another case review. It shows the status as "pending", for the reason of "waiting for further information". It reflects "no information" with regard to the suspect's identification and the collection of blood samples from the family. The priority level of the case is set as "low". The reviewing officer maintained the same status and recommendations for the further disposition of the case within the WCIU.

c. With regard to both victims

44. AWCIU's Case Report, dated 3 October 2007, shows that the case was registered on 8 December 2005. It mentions both Mr Spasić and Mr Đokić as victims, and has a cross-reference to the above-mentioned CCIU case (see § 32 above). A Case Analysis Report, also dated 3 October 2007, states that there are no known suspects or witnesses. It recommends additional interviews of the complainants and their family members; if nothing new is learned, the case is recommended for closure due to lack of evidence.
45. A case review form prepared by an EULEX Prosecutor, dated 6 March 2009, indicates that no witness statements are present in the file. In a request to conduct further investigation, dated 20 July 2009, the same prosecutor recommends interviewing the persons who reported the abduction.
46. Nowhere in the investigative file is the name of Mrs Nedeljković, or a reference to her as Mr Spasić's sister, found.

III. THE COMPLAINTS

47. The complainants complain about UNMIK's alleged failure to properly investigate the abduction of their close relatives. In this regard the Panel deems that they invoke a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
48. The complainants also complain about the mental pain and suffering allegedly caused to them 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

49. 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 European Convention on Human Rights (ECHR) in that UNMIK Police did not conduct an effective investigation into their relatives' abduction.

1. The scope of the Panel's review

50. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
51. 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 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.

52. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
53. 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.
54. 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.
55. Likewise, the Panel emphasises that, as far as its jurisdiction *rationemateriae* 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.
56. 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

57. The complainants in substance allege violations concerning the lack of an adequate criminal investigation into the disappearance of their relatives. The complainants also state that they were not informed as to whether an investigation was conducted and what the outcome was.
58. In his comments on the merits of the complaints, the SRSG agrees that by virtue of the United Nations Security Council Resolution 1244 (1999), UNMIK was responsible for the security and safety of persons living in Kosovo. Accordingly, the SRSG acknowledges that UNMIK had an obligation to carry out an effective investigation into the abduction of Mr Veljko Spasić and Mr Vladimir Đokić, as required under Article 2 of the ECHR.
59. The SRSG also accepts that Mr Veljko Spasić and Mr Vladimir Đokić disappeared in life-threatening circumstances, which are not imputable to any of UNMIK's agents. The SRSG likewise accepts that it was UNMIK's responsibility to conduct an effective investigation into their abduction, in pursuit of a general goal to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 *On the Authority of the Interim Administration in Kosovo* and subsequently, UNMIK Regulation 1999/24 *On the Law Applicable in Kosovo*, and Article 2 of the ECHR.
60. The SRSG asserts that the context of the procedural element of Article 2 of the ECHR consists of (i) an obligation to determine through investigation the fate/or whereabouts of the missing person; and (ii) an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the abduction and/or death of the missing person.
61. The SRSG explains that UNMIK did not have a professional, well-trained and well-resourced police force, which is fundamental to conducting effective investigations; it had to be established and progressively developed. This process is still ongoing even today, with the presence of EULEX Police Component. In June 1999, when the victims in this case disappeared, there was a complete police vacuum caused by the complete withdrawal of Yugoslav authorities and a slow deployment of UNMIK Police.
62. The SRSG continues that the WCIU, which then included both UNMIK Police and Kosovo Police officers, had to undertake all related functions, which included locating illicit graves, identifying the perpetrator/s and collecting evidence related to the crime itself. Furthermore, international police officers had to adjust to conducting investigations in a foreign territory and cultures. On the other hand, the fledging local police could only provide a limited amount of support in many cases due to a lack of capacity and capability amongst its officers, who were working in a developing police institution and often had very little expertise in such investigations. The almost complete absence of any local governmental institutions, as well as lack of witnesses' cooperation additionally complicated the investigators' job.
63. The SRSG states that the above-mentioned constraints "... inhibited the ability of an institution such as UNMIK Police to conduct investigations in a manner, when viewed systematically, that may be demonstrated, or at least expected, in other States with more

established institutions and without the surge in cases of this nature associated with a post-conflict situation.” However, the SRSG states, in light of the substantial number of the missing persons cases resolved, there is no doubt that the work of the OMPF contributed greatly to determining the whereabouts and fate of many of the missing from the Kosovo conflict.

64. The SRSG finally asserts that UNMIK Police evidently did conduct investigative activities in accordance with the procedural requirement of Article 2 of the ECHR, aimed at determining the fate of Mr Spasić and Mr Đokić and at bringing those responsible for their abduction to justice. However, the SRSG continues, “... due to absence of any known potential witnesses or suspects, there were only very limited possibilities for UNMIK Police to investigate further. Moreover, the circumstances surrounding the actual abduction of [Mr Spasić and Mr Đokić] remain unclear. It is still not confirmed at what point in time and from where [they] disappeared.” Unfortunately, witnesses were not able to provide additional substantive information, therefore the police was not able to initiate further investigations. Accordingly, the investigation remained pending, “... as a result of the need for UNMIK Police to prioritize investigative resources.”
65. The SRSG concludes that having regard to all circumstances of this case, UNMIK police did make reasonable investigative efforts as required by the procedural limb of the Article 2 of the ECHR, thus there has not been a violation.

3. The Panel’s assessment

a) Submission of relevant files

66. The SRSG provided the Panel with copies of all available investigative and other relevant documents on 4 October 2012, and finalised the submission on 4 July 2013. Although there is a possibility that more documents related to this case exist (see § 27 above), UNMIK has not provided any explanation as to which parts of the documentation may be incomplete.
67. 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, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005, § 56).
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.
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. 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.
71. In order to address the complainant’s 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).
72. 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 § 56 above, at § 136).
73. 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).

74. 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).
75. 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 § 71 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).
76. 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 § 74 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 56 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 § 56 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).
77. 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 § 73 above, at §§ 311-314; ECtHR, *Isayeva v. Russia*, cited in § 73

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*

78. The Panel notes that the abductions of Mr Veljko Spasić and Mr Vladimir Đokić occurred shortly after the deployment of UNMIK in Kosovo in the immediate aftermath of the armed conflict, when crime, violence and insecurity were rife.
79. For his part, the SRSG does not contest that UNMIK had a duty to investigate the present case 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 this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
80. 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.
81. 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).
82. 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 § 74 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 § 77 above, at § 164; see also ECtHR, *Güleç v. Turkey*, judgment of 27 July 1998, § 81, Reports 1998-IV; ECtHR, *Ergi v. Turkey*, judgment of 28 July 1998, §§ 79 and 82, Reports 1998-IV; ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 73 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 73 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).

83. 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*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 71 above, at §§ 86-92; ECtHR, *Ergi*, cited above, at §§ 82-85; ECtHR [GC], *Tanrikulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Hashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, at §§ 215-224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
84. 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 § 70 above, at § 1; HRC, *Abubakar Amirov and Aizan Amirova 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).
85. 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 § 19 above).

86. 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 case*

87. Examining the particulars of this case, the Panel notes that UNMIK presented various documents showing a limited number of actions to investigate Mr Spasić's and Mr Đokić's abductions undertaken by UNMIK Police. The Panel will assess whether the investigation was effective according to the standards set by Article 2 of the ECHR. Having regard to the circumstances of the case, as well as to the allegations made by the complainant, the Panel finds it relevant to ask whether the investigation responded to the requirements of promptness and expedition, whether the investigation was adequate and obvious lines of enquiry were followed and, finally, whether the investigation was sufficiently accessible to the victim's family and to the public (see the approach of the ECtHR in the case *Aslakhanova and others v. Russia*, cited in § 76 above, at § 121).

88. The Panel notes the complainants' statement that Mr Spasić's and Mr Đokić's abductions were promptly reported to KFOR, ICRC, the Yugoslav Red Cross, and an UNMIK International Public Prosecutor in Prishtinë/Priština; the kidnapping of Mr Đokić was also reported to the MUP (see § 25 above). The Panel considers that from February 2000 UNMIK at the latest was informed of the abduction of Mr Spasić (see § 29 above), and from October 2001 of the abduction of Mr Đokić (see § 26 above).

89. The Panel understands that the abductions of Mr Spasić and Mr Đokić had been reported separately, thus separate cases were opened by the UNMIK Police. However, it is obvious that at some point prior to the last review of the available evidence by UNMIK Police in October 2007, the cases had been *de facto* joined and considered further together. Therefore, the term "investigation" used below, unless indicated otherwise, refers to the joined cases as a single matter.

90. The Panel observes that there were obvious shortcomings in the conduct of the investigation from its commencement. However, the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005 (see § 56 above), while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 74 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 §§ 21-22 above).

91. The purpose of this investigation was to discover the truth about the events leading to the abduction of Mr Spasić and Mr Đokić, to locate them or their mortal remains and to identify the potential perpetrators. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material relating to the abduction; to

identify possible witnesses and to obtain statements from them concerning the abduction; to identify the person(s) involved in the abduction and to bring the suspected perpetrator(s) before a competent court established by law.

92. In addition, the duty to investigate facts of this type continued as long as there was uncertainty about the fate of Mr Spasić and Mr Đokić. Even, as in this case, where those individually responsible for the crime have not been located, UNMIK was obligated to use the means at its disposal to regularly review the progress of the investigation to ensure that no new facts had come to light, as well as to inform the relatives of both missing persons regarding developments in the investigation.
93. With regard to Mr Spasić, however, the file shows that from the moment UNMIK had become aware of the matter, until 23 April 2005, the actions undertaken by UNMIK Police were limited to: registering of the case in February 2000, sending information requests to other UNMIK Police units and receiving responses (see § 30 above), interviewing the father of Mr Spasić in July 2000 (see § 33 above), discussing the matter with his mother in April 2002 (see § 35 above), and contacting Mr Spasić's wife by a telephone in June 2004, inquiring about any new information with regard to her missing husband (see § 37 above).
94. With regard to Mr Đokić, within same period, there was an even smaller number of actions: the registration of the case in October 2001 at latest (see § 26 above), receiving the ante-mortem information from ICRC and transferring it into a different form (see §§ 26 and 40 above), a phone conversation with Mr Đokić's wife in, or before, December 2004, and an unconfirmed, but failed, attempt to locate their apartment in Prishtinë/Priština, in order to identify a potential suspect (see § 41 above).
95. In the Panel's view, all those actions appear more like formalities than meaningful police actions. It appears that UNMIK Police remained passive, simply awaiting new information to appear by itself instead of undertaking, at least, minimum necessary, actual investigative steps. The Panel is also concerned by the fact that no statements of injured or reporting parties, or witness, is referred to in the files as having been collected, are present in the file made available to it by UNMIK.
96. In any event, the investigative file should at the minimum have included records of interviews of the complainant and of all the potential witnesses to the alleged crime. In all cases, such interviews should take place as soon as possible and should be recorded and retained in the case file⁵. The failure to formally interview persons who were identified as being involved in the abduction again undermines the effectiveness of the investigation.
97. Particularly illustrative of this assertion is the reaction of the responsible MPU investigator to the information received by phone from the wife of Mr Đokić. As mentioned (see § 41 above), on, or before, 19 December 2004 she stated that the current illegal occupant of her family's apartment in Prishtinë/Priština might have been involved in the abduction of her husband. The address of the apartment is available in the file. The responsible MPU officer writes in the report that he tried to locate that apartment, but it was not possible, because

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

most of the street names in Prishtinë/Priština had changed. His supervising officer supported his inaction and conclusions in this regard, by approving the report.

98. The Panel notes that no attempts to locate the apartment at any later stage are registered in the file.
99. The same report states that no witnesses were available at that moment to be interviewed. This is contrary to the fact that the reporting parties were known to the police and they should have been interviewed. In addition, the mother and father of Mr Spasić had also come into contact with the police, but their formal statements had likewise not been taken. Regardless of the fact that his father provided a name of a Kosovo Albanian, who allegedly gave him information about his son, no attempt to identify that person and interview him was made. Likewise, no attempt to identify any potential witnesses to the abductions by canvassing the area where they allegedly happened is seen from the file.
100. The investigative file also does not reflect any attempt by UNMIK Police to locate Mr Spasić's vehicle, in which both of the victims had allegedly travelled on the day of abduction.
101. In the Panel's view, all the above-mentioned facts indicate the passivity and lack of interest by the police to undertake substantive investigative action in this case. In cases with lack of information to direct the investigation, as in the present case, the police should engage in an active search for information and the leads to follow. The Panel must therefore conclude that failing to pursue these obvious lines of enquiry presents serious deficiencies with respect to the effectiveness of the investigation.
102. The Panel also notes with concern the lack of involvement of international public prosecutors in this investigation. With the exception of the fact that the criminal report of Mrs Đokić was translated into English by an interpreter of the UNMIK DOJ, no other action by UNMIK international judiciary in the matter is visible. This is despite the fact that the investigation of war crimes and grave inter-ethnic crimes were supposed to be the main purpose for engagement of their professional services by UNMIK.
103. Coming to the period within its jurisdiction, starting from 23 April 2005 the Panel again notes that no further investigative activity took place with respect to remedying the apparent deficiencies mentioned above. After that critical date the failure to conduct the necessary investigative actions persisted, thus, in accordance with the continuing obligation to investigate (see § 76 above), bringing the assessment of the whole investigation within the period of the Panel's jurisdiction.
104. Although there were a number of reviews of the investigations when they were still seen as separate, as well as after they were joined, they simply carried forward the assessments made in the previous reviews, reflecting no new actions to rectify the deficiencies, such as lack of witness statements in the file. Despite shortcomings, the responsible supervisors endorsed the investigators' conclusions to keep both cases inactive until additional information became available. The Panel considers this to be an indication of a failure in the system of review as a quality control over the investigative proceedings, which can hardly be justified and/or attributed to the material and personnel constraints suffered by UNMIK.

105. With regard to the fact that the case of Mr Đokić was low-priority (see § 43 above), the Panel agrees that in a situation of a massive influx of potential criminal reports where there is limited police investigative capacity on the ground, prioritisation is one of the ways of maintaining a level of efficiency, when only the most serious cases with obvious leads are addressed. In this respect, the Panel considers the pre-eminence of the right to life in international instruments on the protection of human rights (see, for instance, ECtHR, *Streletz, Kessler and Krenz v. Germany* [GC], nos 34044/96, 35532/97 and 44801/98, judgment of 22 March 2001, § 85, ECHR 2001-II). In any event, such prioritisation of investigations should take place only after the minimum possible investigative steps have been taken and all obtainable information has been collected and analysed. In this case, prioritisation should not have been done when practically no information on the alleged abduction had been gathered, and especially as it had occurred in an obviously life-threatening environment and in suspicious circumstances (see the Panel's approach HRAP in *B.A.*, no. 52/09, opinion of 1 February 2013, § 82).
106. The Panel therefore considers that, having regard to the circumstances of the particular case, UNMIK failed to take all reasonable steps to locate Mr Spasić and Mr Đokić or their mortal remains, and failed to identify the perpetrators and to bring them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 74 above), as required by Article 2.
107. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 of the ECHR also requires the victim's next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests (see § 77 above). In this regard, the complainants, Mrs Spasić and Mrs Đokić, state that they received no feedback whatsoever from UNMIK on the investigation concerning their husbands' abduction. As the Panel has already noted, no statement was ever taken from the complainants. There is no record in the file that any information was given to them concerning the status of the investigation. The Panel therefore considers that the investigation was not accessible to these two complainants and their families, contrary to the requirements of Article 2 of the ECHR.
108. The Panel cannot disregard the fact that the name of Mrs Nedeljković appears not to have been known to UNMIK Police. This complainant, Mrs Nedeljković, does not claim that she ever came forward as a witness in this case, or tried to contact anyone with regard to the alleged abduction of her brother. Thus, it would not be reasonable to expect UNMIK Police to look for her and provide her with any information related to the investigation, in the same way as with respect to Mrs Spasić and Mrs Đokić, as the police were not aware of her being an interested party.
109. Therefore, the Panel considers that there was no infringement of the requirement of public scrutiny with regard to Mrs Nedeljković. However, the Panel's considerations regarding the existence of other systemic failures in this investigation, provides a sufficient basis for concluding that a violation of procedural obligations under Article 2 as a result of the lack of investigative efforts into Mr Spasić's and Mr Đokić's abduction existed also with regard to Mrs Nedeljković's complaint.
110. Having considered all the deficiencies and shortcomings of the investigation as described above, the Panel concludes that UNMIK failed to carry out an adequate and effective investigation into the circumstances of the abduction of Mr Veljko Spasić and Mr Vladimir

Đokić. Accordingly, there has been a violation of Article 2 of the ECHR in its procedural aspect.

B. Alleged violation of Article 3 of the ECHR

111. The Panel considers that the complainants invoke, 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

112. 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 §§ 50 - 56 above).

113. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, “the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 83 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 74 above, at § 74; ECtHR, *Alpatulsrailova 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).

114. 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, judgment of 15 July 2010, §§ 147-148).

2. The Parties' submissions

115. The complainants allege that the lack of information and certainty surrounding the abduction of their close relatives, particularly because of UNMIK’s failure to properly investigate it, caused mental suffering to themselves and their families.

116. The SRSG reverts by stating that in respect of the conduct of the authorities in response to inquiries by the family, a violation may be found depending on the reactions of the authorities and their attitudes to the situation when it is brought to their attention. In this case, there is no documentation or claim to indicate that UNMIK acted inappropriately, or the members of Mr Spasić’s and Mr Đokić’s families were confronted with an attitude that would have evidenced any disregard for the seriousness of the matter or the emotions of the complainants emanating from the continued missing status of their husbands and brother. The SRSG notes that UNMIK Police did contact Mr Spasić’s and Mr Đokić’s wives “... and presumably apprised them of the status of their investigation.”

117. The SRSR adds that the understandable and apparent mental anguish and suffering of the complainant cannot be attributed to UNMIK, but rather results from the disappearance of a close family member and the unfortunate fact that to date, despite efforts, the authorities have been unable to determine their whereabouts. The SRSR concludes that the complainants' suffering lacks a character distinct from the emotional distress which may be regarded as inevitably caused to the relatives of a victim of a serious human rights violation.

118. Therefore, the SRSR asserts that there is no basis for finding a violation of Article 3 of the ECHR.

3. The Panel's assessment

a) General principles concerning the obligation under Article 3

119. 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.

120. 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 § 70 above, at § 150).

121. 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.

122. 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).

123. 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 § 113 above, at § 94).

124. 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 § 113 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).
125. 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*, Views of 26 July 2010, § 10, CCPR/C/99/D/1588/2007), grandchildren (*ibid.*) and even cousins (*Bashasha v. Libyan Arab Jamahiriya*, Views of 20 October 2010, § 7.5, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the *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” (*Amirov v. Russian Federation* Communication No. 1447/2006, views of 2 April 2009, § 11.7, CCPR/C/95/D/1447/2006).

126. 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).
127. 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 § 83 above, at § 140).
128. 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 abduction and UNMIK cannot be held responsible for the applicant's mental distress caused by the commission of the crime itself.
129. 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).
130. 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 complaint before it.

b) Applicability of Article 3 to the Kosovo context

131. 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 §§ 78-86).
132. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations (see § 85 above). 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 § 19 above).

133. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaint before it, considering the particular circumstances of the case.

134. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants' quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.

c) Compliance with Article 3 in the present case

135. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 3 of the ECHR.

136. The Panel notes the proximity of the family ties between the complainants and the missing persons, as they are their spouses and a sister. Accordingly, the Panel has no doubt that they indeed suffered serious emotional distress since the abductions, which took place in June 1999.

137. The Panel likewise notes that Mrs Spasić and Mrs Đokić applied to various bodies in Serbia and Kosovo, national and international, with enquiries, but despite their attempts, they have never received any explanation or information as to what became of their husbands following their abduction.

138. The Panel notes that the formal statements of Mrs Spasić and Mrs Đokić have never been recorded and that there is no evidence in the file that they were ever informed of the progress of the investigation; the SRSG does not contest that (see § 116 above). The Panel reiterates that from the standpoint of Article 3 it may examine UNMIK's reactions and attitudes to the complainants in its entirety. As was shown with respect to Article 2, the file indicates that these two complainants each had only one contact with UNMIK investigative authorities, by telephone, both in 2004, from the time of the filing of the initial report of the abduction (see §§ 37 and 41 and above).

139. Drawing inferences from UNMIK's failure to provide the complete investigative file (see § 66 above) or to provide a plausible explanation for the lack of contact with the complainants, the Panel considers that this situation, which continued into the period of the Panel's temporal jurisdiction, caused grave uncertainty about the fate of their husbands and the status of the investigation.

140. In view of the above, the Panel concludes that Mrs Spasić and Mrs Đokić 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, their pain to live in uncertainty about their fate must be unbearable.

141. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the distress and mental suffering of Mrs Slobodanka Spasić and Mrs Jagodinka Đokić, in violation of Article 3 of the ECHR.

142. With regard to Mrs Nedeljković, the Panel recalls that she was not the one who reported the case to UNMIK authorities, and that she was never in contact with the police, in any way letting them know that she had interest in the investigation, or requested to be considered an injured party. Without her so doing, it is not reasonable for the police to look for her in order to update her on the status of the investigation. She also did not claim that she was in any way victimised by the authorities' behaviour.
143. Thus, in the Panel's view, even having found failures in the conduct, reactions and attitudes of UNMIK's authorities with regard to this investigation, there is no evidence that any additional suffering was caused by that to Mrs Nedeljković. Therefore, the Panel finds no violation of Article 3 with regard to this complainant.

V. CONCLUDING COMMENTS AND RECOMMENDATIONS

144. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
145. The Panel notes that enforced disappearances and arbitrary executions constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for killings, abductions or disappearances in life-threatening circumstances. Its failure to do so constitutes further serious violations of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
146. 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.
147. 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 § 21), 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 is limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
148. 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 complainants 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*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [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 abductions of Mr Veljko Spasić and Mr Vladimir Đokić will be established and that perpetrators will be brought to justice. The complainants and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;

–Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the abduction of Mr Veljko Spasić and Mr Vladimir Đokić, as well as the distress and mental suffering subsequently incurred by Mrs Spasić and Mrs Đokić, and makes a public apology to the complainants and their families in this regard;

–Takes appropriate steps towards payment of adequate compensation to all 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 Mrs Spasić and Mrs Đokić 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 WITH RESPECT TO ALL COMPLAINANTS;

2. FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH REGARD TO THE COMPLAINTS OF MRS SLOBODANKA SPASIĆ AND MRS JAGODINKA ĐOKIĆ;

3. FINDS THAT THERE WAS NO VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH REGARD TO THE COMPLAINT OF MRS CVETA NEDELJKOVIĆ.

4. 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 ABDUCTIONS OF MR VELJKO SPASIĆ AND MR VLADIMIR ĐOKIĆ 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 ABDUCTIONS OF MR VELJKO SPASIĆ AND MR VLADIMIR ĐOKIĆ, AS WELL AS FOR THE DISTRESS AND MENTAL SUFFERING INCURRED BY MRS SLOBODANKA SPASIĆ AND MRS JAGODINKA ĐOKIĆ, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS AND THEIR FAMILIES;

c. TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 TO ALL COMPLAINANTS, AND IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 3 OF THE ECHR TO MRS SLOBODANKA SPASIĆ AND MRS JAGODINKA ĐOKIĆ.

d. TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;

e. TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;

- f. TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member

ABBREVIATIONS AND ACRONYMS

AMR - Ante-Mortem Report
CCIU - Central Criminal Investigation Unit
CCR - Case Continuation Report
DOJ - Department of Justice
DPPO - District Public Prosecutor's Office
ECHR - European Convention on Human Rights
ECtHR - European Court of Human Rights
EU - European Union
EULEX - European Union Rule of Law Mission in Kosovo
FRY - Federal Republic of Yugoslavia
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
KFOR - International Security Force (commonly known as Kosovo Force)
KLA - Kosovo Liberation Army
MoU - Memorandum of Understanding
MPU - Missing Persons Unit
MUP - Serbian Ministry of Internal Affairs (Serbian: *Министарство унутрашњих послова*)
NATO - North Atlantic Treaty Organization
OMPF - Office on Missing Persons and Forensics
OSCE - Organization for Security and Cooperation in Europe
RIU - Regional Investigation Unit
RHQ - Regional Headquarters
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