

KOSOVO: UNMIK'S LEGACY

THE FAILURE TO DELIVER
JUSTICE AND REPARATION
TO THE RELATIVES OF THE
ABDUCTED

**AMNESTY
INTERNATIONAL**



Amnesty International Publications

First published in 2013 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2013

Index: EUR 70/009/2013
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Cover photo: [Credit]

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

AMNESTY
INTERNATIONAL



CONTENTS

1. Introduction	5
2. UNMIK's responsibilities	7
3. Complaints to the HRAP	9
3.1 Cases considered by the HRAP	9
The abduction of S.C.'s husband and son	10
The abduction and killing of B.A.'s father	11
The "disappearance" and death of Mr S.S. and "disappearance" and killing of Ms B.S.	12
The abduction and killing of Borislav Pavić	12
The abduction and death of Mr Dušan Bogićević	13
The abduction and killing of Mr Momčilo Ristanović	13
The killing of Mr Panta Filipović	13
The abduction and death of Dragomir Đukanović and Jovica Đukanović	14
The "disappearance" and killing of Mr Zoran Nedeljković	14
the "disappearance" and killing of Mr Z.D.	14
The killing of Mr Zoran Vukićević	15
The abduction and murder of Petrija Piljević	15
3.2 Complaints under Article 3	16
The abduction of Svetlana Jočić's son	17
The abduction of Nehat Ruhani	18
The abduction and probable killing of Mr D.P. and Mr Ms. Đ.	18
The abduction of Svetislav Nedeljković	19
The abduction and killing of Dimitrije Milenković and Aleksandar Milenković	19

The abduction and death of Mr Zvonko Marinković	20
The abduction of Dr Andrija Tomanović.....	20
3.3 SRSG responses to the HRAP	21
4. The right to access to justice.....	22
5. The right to reparation	24
5.1 The Obligation to make reparation.....	24
5.2 UNMIK's failure to guarantee reparation.....	25
6. Conclusions and Recommendations.....	28
ENDNOTES	29

1. INTRODUCTION

"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, [...], do not justify such inaction, either at the outset or subsequently." UNMIK Human Rights Advisory Panel.¹

Amnesty International has for over a decade highlighted the continuing lack of justice, truth and reparation for the victims of human rights violations (some of which may constitute crimes under international law) committed during and in the aftermath of the 1998-9 war in Kosovo.² In particular, the organization has focussed on the absence of justice, truth and reparation for the victims of enforced disappearances and abductions, including the relatives of the missing persons.³

This report reveals how the UN Interim Administration Mission in Kosovo (UNMIK), charged with the protection of human rights in Kosovo, signally failed to initiate prompt or thorough investigations when people reported their family members missing in the immediate aftermath of the war. Based on evidence considered by UNMIK's own Human Rights Advisory Panel (HRAP), it reveals a shocking disregard for the rights of missing persons and their family members. The HRAP's initial opinions, summarised in this report, more than confirm Amnesty International's findings – that such reports were not promptly, impartially and thoroughly investigated by UNMIK police, and that relatives were rarely informed of any progress in those investigations. Indeed, in some of the complaints considered to date, the HRAP has found that no investigation ever took place, or that the investigation was abandoned after the remains of the missing person were returned to their family for burial.

The report also reveals how UNMIK still continues to violate the rights of those family members by failing to implement the recommendations of the HRAP, with respect to reparation. Under the current UN rules related to compensation, UNMIK has no obligation to pay compensation for any human rights violations. This means that UNMIK has no formal obligation to provide the relatives with access to adequate reparation – including financial compensation for their loss, and their pain and suffering.

Amnesty International considers that the abductions which took place after the end of the armed conflict in June 1999, in the aftermath of the war, were part of a widespread, as well as a systematic, attack on a civilian population and, as such, may constitute crimes against humanity and must be investigated as such. Based on the organization's research since 1999, and now confirmed by the cases included in this report, Amnesty International considers that UNMIK's failure to investigate potential criminal liability for such crimes has contributed to the climate of impunity that continues to widely prevail in Kosovo.

Although this report focuses on the abductions of Kosovo Serbs, allegedly by members of the Kosovo Liberation Army (KLA), Amnesty International has found similar failings to those

identified by the HRAP – with regard to UNMIK’s failure to conduct prompt, impartial and effective investigations into enforced disappearances of ethnic Albanians by Serb police, military and paramilitary forces.⁴

2. UNMIK'S RESPONSIBILITIES

In June 1999, under UN Security Council Resolution 1244/99, UNMIK was mandated to administer Kosovo. Under that resolution UNMIK was charged with the responsibility for “protecting and promoting human rights.”⁵ In the report accompanying this resolution the Secretary General of the UN further emphasized this responsibility, stating: “UNMIK will be guided by internationally recognized standards of human rights as the basis for the exercise of its authority in Kosovo.”⁶

Between July 1999 and November 2008, UNMIK was responsible for the investigation and prosecution of serious crimes, including war crimes. Amnesty International's previous research, based on interviews with the relatives of the missing on both sides of the conflict had shown that between UNMIK police and prosecutors failed to conduct prompt, thorough, impartial and independent investigations into the enforced disappearance of ethnic Albanians by Serbian military, police and paramilitary forces, and the abduction of Serbs, Roma and other minority individuals by members of the KLA.⁷ The organization found that even where investigations did take place, they were not carried out thoroughly and that, in some instances, investigations were closed for no apparent reason, or for reasons of political expediency.⁸

Now, UNMIK's failure to investigate cases of missing persons is being revealed in a series of complaints being considered by the Human Rights Advisory Panel (HRAP). The HRAP was established by UNMIK, to “examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of the human rights...”, set out in international human rights standards applicable in Kosovo, including the European Convention on Human Rights and Fundamental Freedoms (ECHR).⁹

Amnesty International has already called on the Head of UNMIK, the Special Representative of the UN Secretary General in Kosovo (SRSG), to abide by his responsibilities, and the HRAP's recommendations to UNMIK, to take all possible steps to ensure that the relatives receive the justice, truth and reparation they have awaited for so long.¹⁰

However, UNMIK's responsibilities for the rule of law ceased in December 2008, when the European Union Rule of Law Mission in Kosovo (EULEX) took over UNMIK's policing, prosecutorial and judicial functions including responsibility for the investigation and prosecution of serious crimes, including crimes under international law.¹¹

Few of the cases included in this report have yet been investigated by EULEX. Although EULEX police and prosecutors have made some progress in investigating cases of the enforced disappearance of Kosovo Albanians by Serb forces, they have made little progress in investigations and prosecutions which relate to the abductions of Serbs and other minorities.¹² Indeed, in 2009, EULEX prosecutors in the Special Prosecution Office for the Republic of Kosovo (SPRK) transferred 62¹³ case files of alleged abductions to EULEX prosecutors in local courts, on the incorrect basis that they were not within their jurisdiction, as they took place after the end of the armed conflict.¹⁴ As far as Amnesty International has been able to establish they have not been investigated or have been classified erroneously as

8 Kosovo: UNMIK Legacy
The Failure to Deliver Justice and Reparations to the Relatives of the Abducted

ordinary crimes, subject to statutory limitations.

3. COMPLAINTS TO THE HRAP

Some 250 complaints were submitted to the UNMIK HRAP by the relatives of missing persons - primarily Kosovo Serbs believed to have been abducted by members of the KLA – who had not yet received justice, truth or reparation.¹⁵ Each complainant claimed that UNMIK had failed to investigate the abduction and subsequent murder of their relative or relatives.

The HRAP was established under UNMIK Regulation No. 2006/12, “On the Establishment of the Human Rights Advisory Panel.”¹⁶ Article 1.2 of the Regulation empowered the HRAP to “examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of [the] human rights”, set out in international standards applicable in Kosovo. While Amnesty International recognizes that the regulation provides at Article 1.3 that, “The findings of the Advisory Panel, which may include recommendations [to the SRSG], shall be of an advisory nature”, the organization is concerned that in too many cases, the panel’s advice has not been heeded or put into practice.¹⁷

While the HRAP is not a court and is not empowered to conduct a criminal investigation, it may recommend that such an investigation is opened so, if as an outcome of such an investigation sufficient admissible evidence is obtained, those suspected of criminal responsibility can be brought to justice. However, in the majority of cases considered by the HRAP prior to 2012, where the HRAP has recommended the opening of a criminal investigation, no further measures appear to have been taken by UNMIK to ensure that an investigation is opened.¹⁸

3.1 CASES CONSIDERED BY THE HRAP

Of 250 complaints submitted by relatives of abducted persons to the HRAP, 247 were found to be admissible by the end of 2012, when the HRAP began the consideration of the merits of each case.¹⁹ Each complainant alleged that UNMIK failed to conduct effective, prompt, thorough and impartial investigations into the abduction and/or murder of their missing family member: this is considered to be a violation of the “procedural obligation” of Article 2 of the ECHR, which guarantees the right to life.²⁰ In some cases, complainants also alleged a violation of Article 3 of the ECHR, which prohibits torture and other ill-treatment.²¹

As of 31 July 2013, the HRAP had made public 20 opinions in 25 complaints related to cases involving the abduction and/or murder of 24 individuals.²² With one exception,²³ and based on the jurisprudence of the European Court of Human Rights, the panel concluded that UNMIK had failed to conduct investigations into those crimes in line with the requirements of Article 2.

In their examination of each complaint, the HRAP considered the statements presented by the complainants and the evidence presented by UNMIK, largely based on the original investigative case files.²⁴

In almost every case, the complainants had promptly reported their relative missing to the International Committee of the Red Cross (ICRC), responsible for initiating tracing requests,

and establishing a database of the missing;²⁵ the NATO-led force in Kosovo (KFOR), and UNMIK Police Missing Persons Unit (MPU), established in November 1999. The investigating authorities included the UNMIK Central Criminal Investigative Unit (CCIU), dealing with serious crimes, including inter-ethnic crimes and abductions, and later a dedicated UNMIK War Crimes Investigation Unit (WCIU).

Each case, while unique, shows similar patterns including: the failure to promptly gather evidence or incomplete documentation of evidence gathered, including the absence of records of statements by complainants or witnesses; the failure to maintain investigative files, and the failure to regularly review investigations - the majority of investigative files considered by the panel were never reviewed after 2005. Indeed, in several cases, UNMIK was not able to present any evidence that an investigation took place (see, S.C., Z.D, Đukanović, Pavić, Vukićević).

In several cases, (see for example, B. A., Pavić, Bogićević, Z.D., Marinković, Nedjelković, Ristanović, S.S & B.S) UNMIK police appear to have given up on the investigation after the body of the victim had been handed over to the relatives. While the location of burial or grave sites, and the recovery, identification and subsequent return of mortal remains to the family is an important part of any investigation, (and often the most important element for the relatives of the victim), in these cases UNMIK failed to take any measures beyond the recovery of the body.²⁶ In the case of S.C. (see below), UNMIK police were even unaware that the bodies of her missing husband and son had been found, and returned to her for burial. In such cases, the Panel found: "Specifically with regard to persons disappeared and later found dead, the [European] Court [of Human Rights] has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR".²⁷

The HRAP also consistently found that UNMIK had largely failed to inform complainants of any progress in the investigation, when investigative measures had taken place, or the results of their investigations.²⁸ Amnesty International finds the lack of due diligence shown by UNMIK police in these cases, particularly in their failure to keep the family members informed, to be nothing less than shocking.

In each of the cases summarised briefly in this report, the HRAP found that the complainants' rights under Article 2 ECHR had been violated by UNMIK's failure to conduct a prompt and/or effective investigation, and made a series of broadly similar recommendations in each case, as set out in the case of S.C., (see box, below).

THE ABDUCTION OF S.C.'S HUSBAND AND SON²⁹

On 6 December 2012, the HRAP adopted their first opinion brought by the relative of a missing person, finding that UNMIK had failed to conduct an effective investigation into the abduction in July 1999 of S.C.'s husband and son, allegedly by three uniformed members of the KLA. The panel found that:

"... from the registration of the case until January 2002, apparently no action whatsoever aimed at establishing the whereabouts of the complainant's family members or to identify those responsible for their disappearance was undertaken by UNMIK Police. No statement was ever taken from the complainant, witnesses to the abduction, or from other family members. No efforts were made to search for evidence (i.e.

the victims' car) or to follow obvious lines of enquiry (i.e. KLA commanders in the area of Prizren). During 2002, the only step taken by UNMIK was the registration of ante-mortem information concerning Ah.C. and An.C., which had been gathered by the ICRC".³⁰

According to evidence provided to the HRAP, on 6 March 2003 the bodies of the two men were returned to their family. Their bodies had been exhumed in 2000 by investigators working for the International Criminal Tribunal for the former Yugoslavia. The autopsy concluded that the two then unidentified men had died as a result of multiple gunshot wounds. Their identity was then subsequently confirmed in January-February 2003, by the International Commission for Missing Persons, using DNA analysis in which the DNA in the bones of the deceased is compared with the DNA in the blood of living relatives.³¹

Sometime before March 2005 the Serbian authorities submitted a criminal complaint on behalf of S.C. to the UNMIK international prosecutor in Prizren. In March, a list of cases was submitted from Prizren to the UNMIK police War Crimes Investigation Unit (WCIU), and registered in April. The case file described the case of Ah. C and An. C. as inactive, and stated that Ah.C. and An.C. were still missing.

In two further reviews of the case, both conducted in 2007, Ah.C. and An.C. were still described as missing. The reviewing officers recommended that the cases be closed/remain inactive, respectively, pending new information.³²

Amnesty International is frankly appalled that despite the fact that the bodies of the two men had been exhumed, subsequently identified in 2003,³³ and then returned to their relatives, the two men were described by investigators as missing in 2005 and again twice in 2007.

In the case of S.C., the HRAP recommended that UNMIK:

"A. Urges EULEX and other competent authorities in Kosovo to take all possible steps in order to ensure that the criminal investigation into the disappearance and killing of the complainant's family members is continued in compliance with Article 2 of the ECHR and that the perpetrators are brought to justice;

B. Publicly acknowledges responsibility for its failure to conduct an effective investigation into the disappearance and killing of the complainant's family members and makes a public apology to the complainant and her family;

C. Takes appropriate steps towards payment of adequate compensation to the complainant for moral damage;

D. Takes appropriate steps towards the realisation of a full and comprehensive reparation programme;

E. Takes appropriate steps at the United Nations as a guarantee of non repetition;

F. Takes immediate and effective measures to implement the recommendations of the panel, and to inform the complainant and the panel about further developments in this case".

THE ABDUCTION AND KILLING OF B.A.'S FATHER³⁴

On 13 February 2013, the HRAP considered a complaint by B.A., that UNMIK had failed to investigate the abduction and death of his father, and that he had not been informed as to whether an investigation was being conducted. B.A.'s father was taken from his home in the

village of Matiqan/Matičane, near Prishtinë/Priština on 19 July 1999. B.A. was subsequently informed “by Albanians” that his father had been killed, but due to the security situation was unable to collect his body, which was subsequently buried in a cemetery in Prishtinë/Priština. The only “evidence” presented by UNMIK was, “The relevant entry in the UNMIK Police database, which was provided to the Panel by UNMIK, [which] indicates that M.A.’s body was exhumed on 10 June 2000 from Dragodan cemetery”. The panel found that B.A.’s right under Article 2 had been violated, and made very similar recommendations to those made in the case of S.C. as set out above.

THE “DISAPPEARANCE” AND DEATH OF MR S.S. AND “DISAPPEARANCE” AND KILLING OF MS B.S.³⁵

According to C.S., on 17 May 1999, her husband, S.S., and her daughter, B.S., left Prishtinë/Priština bus station to travel to Rahovec/Orahovac, to attend the funeral of their other daughter, who had been killed in a previous incident, allegedly involving the KLA. On 23 May 1999, she learned that her husband and daughter had never arrived at their destination.

C.S. notified all available authorities, reporting to UNMIK police in Graçanicë/Gračanica on 29 July 2000. In March 2001, S.C. provided ante mortem information to the MPU.

According to the OMPF, the mortal remains of S.S. and B.S. were located on 2 October 2002. Autopsies conducted on 17 December 2003, found that the cause of death for S.S. was “unascertained”, while B.S. was killed by a “gunshot wound to the head”. After a positive DNA identification in November 2004, the mortal remains of S.S. and B.S. were handed over to a member of the complainant’s family on 7 February 2005.

All of this information was provided by OMPF: UNMIK was unable to provide any additional material regarding the criminal investigation following the return of S.S. and B.S. to their family. The file was never reviewed. No statement was ever taken from C.S., and no information was ever given to her concerning the status of the investigation.

THE ABDUCTION AND KILLING OF BORISLAV PAVIĆ³⁶

Borislav Pavić was abducted from a market place in Gjilan/Gnjilane on 24 July 1999. His wife, Jordanka Pavić, reported the abduction to UNMIK (who interviewed her in October 1999), KFOR, the ICRC, the Yugoslav Red Cross and the Association of Families of Kidnapped and Missing Persons, (who subsequently submitted a criminal complaint to prosecutors in Kosovo and Serbia).

Borislav Pavić’s mortal remains were exhumed, and then reburied in Gjilan/Gnjilane by the ICTY in 2000. They were re-exhumed, and his body identified by DNA analysis in November 2002; the autopsy conducted by the ICTY and the death certificate confirmed the cause of death as “brain damage from a bullet”. His remains were returned to his family in March 2003.

Despite the early reporting of the incident, UNMIK failed to provide the Panel with files related to any investigation into the abduction and killing of Borislav Pavić, or to explain why the files were not made available. The Panel found a violation of Article 2 on the basis that: “...no steps appear to have been taken by UNMIK to clarify the circumstances of Borislav Pavić’s abduction and killing and bring any perpetrators to justice”, and that UNMIK had

failed to inform Jordanka Pavić about any investigation.

THE ABDUCTION AND DEATH OF MR DUŠAN BOGIĆEVIĆ³⁷

Dusan Bogićević was last seen alive on 17 June 1999. A witness told his sister, Mirjana Bogićević, that he had been abducted by KLA members, in front of the “Shoe and Leather Factory” building in Pejë/Peć.

Mirjana Bogićević immediately reported her brother’s abduction to the ICRC and Italian KFOR, and later to UNMIK. UNMIK’s investigative file, opened sometime in 2001, contained an undated statement from Mirjana Bogićević to the Humanitarian Law Centre, (a Serbian NGO), and a list of abducted Serbs, including that of Dušan Bogićević and the name of a possible suspect.³⁸

Remains, later identified as Dušan Bogićević, were discovered in grave site in Prishtinë/Priština on 22 June 2006. According to an autopsy conducted by the OMPF on 27 October 2006, a large area of his skull was missing, so the cause of death could not be established. On 13 March 2007, based on a positive DNA match and on the comparison of ante- and post-mortem information, the OMPF issued a “confirmation of identity” certificate and Dušan Bogićević’s remains, were handed over to his relatives on 23 March 2007. Once more, UNMIK closed the case, appearing to have concluded that their responsibility had ended with the handover of the mortal remains of Dušan Bogićević.

THE ABDUCTION AND KILLING OF MR MOMČILO RISTANOVIĆ³⁹

On 17 June 1999, Momčilo Ristanović was “abducted from their family flat in Prizren by a named person wearing a KLA uniform”. His wife, Slavica Ristanović, notified the relevant authorities, and was later informed by a neighbour that her husband had been killed. According to the UNMIK Police database, Momčilo Ristanović’s mortal remains were exhumed by ICTY investigators on 10 August 2000 from a cemetery in Prizren, and subsequently reburied in Suva Reka cemetery (18 kms away) on 29 August 2002.⁴⁰

On 7 September 2000, the MPU interviewed Slavica Ristanović in order to collect ante-mortem data. According to a death certificate, issued in September 2002, Momčilo Ristanović was killed by a “gunshot wound to the head”. UNMIK presented no further investigative material, except a list which included the name of the alleged perpetrator.⁴¹ The Panel consequently found that “no evidence that any action was undertaken with respect to clarifying the circumstances surrounding Momčilo Ristanović’s abduction and killing”.

THE KILLING OF MR PANTA FILIPOVIĆ⁴²

Panta Filipović was murdered outside his house on 21 June 1999, while his wife, Marija Filipović, was in Prizren, looking for information about their missing son. A priest from the local seminary saw Panta Filipovic’s body covered with blood, just before the house was sealed up and Panta Filipović’s body taken away by KFOR forces for burial. Marija Filipović reported the crime to the relevant authorities: she reported that the family had been visited by members of the KLA on 15 and 18 June, and that on the latter date they had assaulted her husband. In June 2004, with no apparent signs of progress, Marija Filipović submitted a criminal complaint (which included the first name and occupation of a possible suspect) to the International Public Prosecutor in Prizren.

Panta Filipović’s remains were exhumed from a gravesite in Prizren by the OMPF on 24 May 2007. An autopsy conducted on 12 June 2007, found that he had been killed by a gun-shot

wound to the head. On 14 November 2007, based on DNA analysis and ante-mortem and post-mortem information, the OMPF issued a “confirmation of identity “certificate. Panta Filipović’s remains were handed over to his son on 23 November 2007. On 20 May 2008, the killing of Panta Filipović was recorded in the WCIU database, but no further investigations took place. In 2009, a EULEX prosecutor dismissed the case – for lack of evidence.⁴³

THE ABDUCTION AND DEATH OF DRAGOMIR ĐUKANOVIĆ AND JOVICA ĐUKANOVIĆ ⁴⁴

On 11 July 1999, three ethnic Albanians, one of them armed, took Dragomir Đukanović and his son, Jovica Đukanović from their apartment for “informative talks”. Dragomir’s wife, Rada Đukanović immediately reported the incident to a KFOR post in her street. KFOR told her they would come back home. The following day she again reported them missing, with details including a description of the three men and the registration number of the car they were driving, and a description of the clothes her husband and son were wearing. Rada informed the ICRC and other authorities, reporting to UNMIK on 27 December 1999. Both men’s bodies were found in October 1999, although the body of Jovica Đukanović was not identified until December 2003, and Dragomir Đukanović sometime after July 2004. The remains of both men were returned to their relatives in August 2005.

On 24 May 2004, the MPU interviewed Rada’s daughter, Radmila Đukanović, (who additionally provided the names of five possible suspects), and recommended that the case be handed over to the CCIU for further investigation. According to a memo, dated 31 July 2004, the investigation was still ongoing, but there were no further entries in the file. The case was never reviewed: Rada and Radmila received no further information about the status of the investigation.

THE “DISAPPEARANCE” AND KILLING OF MR ZORAN NEDELJKOVIĆ ⁴⁵

On 20 August 1999, Zoran Nedeljković left his home in Prishtinë/Priština to go to work. He never returned. His wife, Slavica, reported him missing to the ICRC, who opened a tracing request in September 1999.

On 6 February 2000, the MPU requested the CCIU, Chief of Border Police, Regional UNMIK Police Commanders and KFOR to check their records and source for any information about the whereabouts of Zoran Nedeljković, and to follow up any leads. A similar request was issued in March 2000.

On 29 April 2003, mortal remains were found in Grashticë/Graštica village, Prishtinë/Priština municipality. On 17 December 2003, an autopsy conducted by the OMPF determined that the individual had died from gunshot injuries to the head. The remains were positively identified as those of Zoran Nedeljković on 22 October 2004, and on 21 December 2004, the OMPF returned the body of to his wife. UNMIK police closed the case on 21 December 2004.

THE “DISAPPEARANCE” AND KILLING OF MR Z.D. ⁴⁶

According to his mother, on 2 November 1999, Z.D. left home Suvdolll/Suvi Do in Lipjan/Lipljan municipality on 2 November 1999 to go to work – he was a minibus driver. He did not come home. According to the investigative file, he was reported missing in early November, and a possible suspect named; a request to search for his minibus was issued on 4 November.

In March 2000, his remains were found in woods. According to the autopsy, Z.D. died of

three gunshot wounds, two to the back of the head and one to his upper right shoulder. After identification, Z.D.'s remains were returned to his family on 3 April 2000. The case was closed in 2005; his mother was never informed.

The HRAP found that, "no evidence that any action was undertaken with respect to clarifying the circumstances surrounding Z.D.'s disappearance and killing", including "...interviewing the complainant and other family members, interviewing potential witnesses both at the scene and possibly those who may have been Z.D.'s passengers on the bus on the day of his disappearance, establishing the location of the possible abduction, matching the bullet casings found at the burial scene to any other reported murders and searching the wider location where the body was initially found".

THE KILLING OF MR ZORAN VUKIČEVIĆ⁴⁷

In her complaint, Zoran Vukičević's widow, Jagoda Vukičević described how on the evening of 17 December 1999 her husband, along with seven other Kosovo Serbs, was injured during an armed attack, involving firearms and hand grenades, on a shop/bar in her father's house in Rahovec/Orahovac by unknown men, who she alleged were members of the KLA. Zoran Vukičević suffered severe head injuries and died on the way to a KFOR hospital. Seven days later, KFOR took Jagoda Vukičević and her family over the boundary with Serbia; shortly after, she received the body of Zoran Vukičević, who was buried in Belgrade.

Although Jagoda Vukičević had presented the panel with an authorised Serbian translation of four UNMIK police documents related to the incident on 17 December 1999, UNMIK was unable to present any investigative material to the panel.⁴⁸ In February 2013, UNMIK confirmed that "the armed attack which caused the death of Zoran Vukičević is not registered in the criminal information database, which was created and maintained by UNMIK Police since 1999."

THE ABDUCTION AND MURDER OF PETRIJA PILJEVIĆ⁴⁹

According to a witness, Petrija Piljević was abducted from in front of her apartment in Prishtinë/Priština on 28 June 1999, by three armed men in KLA uniform; a Kosovo Serb neighbour who attempted to help her was also abducted. They were initially held in another apartment in the same building. The witness and neighbours called a KFOR patrol to the scene, but unable to speak English, they could not explain the situation to the soldiers. Instead a Kosovo Albanian neighbour spoke to the KFOR patrol leader, and subsequently the patrol left without taking any action. Shortly after Petrija Piljević and her neighbour were taken outside by the men in KLA uniform and put in a car. "One gunshot was heard shortly thereafter and the car was then driven in an unknown direction. Another gunshot was heard immediately after the car left the scene. Neither victim has been seen alive since that time".

In their consideration of the complaint, the HRAP reviewed the investigative case-file and other material provided, which UNMIK had asked should remain confidential, on the basis that the investigation was still ongoing. They found that on 18 August 1999, a complaint by D.P. was sent from the Serbian Ministry of Interior to KFOR, who forwarded it to UNMIK police, who registered the case on 16 September 1999. In early 2000, one of D.P.'s relatives was interviewed by regional police; and the case was subsequently was sent to the CCIU.

In July 2000, the CCIU was informed that D.P would make a statement, and in August 2000

the case was assigned to an investigator. Sometime later it was reviewed and closed by another investigator. The file was then passed back to the first investigator at the end of 2000, with a note that Petrija Piljević's body had been found and identified. The file then went to the Head of the CCIU Team for assessment, and was returned to the first investigator in May 2001: he took no action, as he was about to leave UNMIK. The case was then given to a new team leader, for another assessment. In a review, dated 26 June 2001, a CCIU investigator expressed his surprise at "how little had been done in the case and listed the minimum set of actions to undertake".

On 21 August 2001, a letter was sent on behalf of D.P. asking for news of progress; there was no reference to any reply in the file. D.P. was eventually interviewed in October 2001. The two eye-witnesses were each interviewed three times, in 2001 – 2003, and another new witness, named by an eye-witness was interviewed in March 2003.

Finally in May and June 2003, the CCIU wrote to the Serbian authorities in relation to the identification of potential witnesses now living in Serbia. The CCIU then closed the file, and although the case was reactivated sometime after 2003, there was no documentation of any further investigation until October 2008, when the WCIU submitted a "case summary" to the UNMIK Department of Justice, proposing that the case be handed over to the Serbian authorities, as the witnesses were living in Serbia.

The Panel considered that there had been an unreasonable delay between September 1999 and October 2001 in interviewing D.P, and that investigators had failed to follow up on the identity and details of one of the suspected perpetrators, which had been provided by an eye witness, who saw the man in 2001.

The panel found a violation under Article 2 ECHR on the basis that there had been "significant omissions throughout the investigation, especially at its initial stage", and that "not all reasonable steps to identify the perpetrators and to bring them to justice were taken by UNMIK". They also found that UNMIK had failed in their obligation to inform D.P. about the progress of the investigation, especially the decision to suspend it in 2003.

3.2 COMPLAINTS UNDER ARTICLE 3

In each of the cases summarised below, in addition to finding a violation of Article 2, the HRAP also ruled admissible complaints by the relatives of the missing person that UNMIK had violated their rights under Article 3 of the ECHR "to be free from inhuman treatment, specifically the right to be free from the mental pain and suffering caused by the disappearance [sic] of a relative".

The European Court of Human Rights has ruled that a state's continued failure to investigate cases of persons missing following a military intervention, during which many persons were killed or taken prisoner and where the area was subsequently sealed off and became inaccessible to the relatives, resulted in a continuing violation of the prohibition against torture and other ill-treatment set out in Article 3 of the ECHR.

The Court has stated that "the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attained a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3".⁵⁰ The

Human Rights Committee has also recognized that the “anguish and stress” suffered by a family member of a victim of enforced disappearance can amount to a violation of Article 7 of the ICCPR which prohibits torture, inhuman or degrading treatment.⁵¹ This has also been recognized as a violation that continues until an effective investigation is carried out.

THE ABDUCTION OF SVETLANA JOČIĆ'S SON

According to Svetlana Jočić, on 18 June 1999 her son and three friends went to the military base in Peć/Peja, after being invited by men wearing Italian Army uniforms to go with them to the Italian KFOR base to seek employment. There, they were allegedly detained by members of the KLA. Svetlana Jočić reported her son missing to all of the relevant authorities, and in July 1999, submitted a tracing request to the ICRC. Her husband later submitted a criminal complaint to the Peć/Peja prosecutor's office.⁵²

Dušan Jočić's mortal remains were discovered on 16 July 2002 in Lubeniq/Ljubenić village, in Peja/Peć municipality. According to the records of an autopsy conducted on 26 November 2004, he died from a “gunshot wound to the head.” However, his body was not identified until 24 July 2007, and his remains were not handed over to the Serbian Commission for Missing Persons for return to his family, until 17 December 2010.⁵³

Evidence submitted by UNMIK to the panel revealed that an investigation into the abduction of Dušan Jočić was opened by the MPU in 2004. However, in a WCIU Case Report, dated 3 October 2007, the status of the case was left blank. The report also included the names of two witnesses and Svetlana Jočić. A later, but undated, report noted that they had not been interviewed.

The Panel found “no evidence that any action was undertaken with respect to clarifying the circumstances surrounding his [JC's] abduction and killing”, including measures to identify the perpetrators or to search for evidence. They also found that “no statement was ever taken from the complainant and no information was given to her concerning the status of the investigation.”

Svetlana Jočić also alleged a violation of her rights under Article 3 to be free of inhuman and degrading treatment.⁵⁴ In view of all the factors – including UNMIK's failure to investigate the abduction; UNMIK's failure to inform Svetlana Jočić of the progress of any investigation, the delay of five years between the finding and identification of the body and the subsequent delay of three years in returning Dušan Jočić's body to his family, the Panel concluded:

“...that the complainant suffered severe distress and for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with her complaint and as a result of her inability to find out what happened to her son. In this respect, it is obvious that, in any situation, the pain of a mother who has to live in uncertainty about the fate of her disappeared son must be unbearable”. The Panel decided that, “...by its behaviour, UNMIK contributed to the complainant's distress and mental suffering in violation of Article 3 of the ECHR.”

The Panel then made a series of recommendation to UNMIK, including to urge EULEX and other competent bodies to open a criminal investigation; and for UNMIK to “publicly acknowledges [s] responsibility for its failure to conduct an effective investigation into the disappearance and killing of the complainant's son, as well as for distress and mental suffering incurred, and make[s] a public apology to the complainant and her

family”, the Panel also urged UNMIK “to take[s] appropriate steps towards payment of adequate compensation of the complainant for moral damage in relation to the finding of violations of Article 2 and Article 3 of the ECHR”; and to ensure “full and comprehensive reparations”.⁵⁵

THE ABDUCTION OF NEHAT RUHANI⁵⁶

On 22 June 1999, a group of armed KLA soldiers entered Ruhan Ruhani’s house in Shtime/Štimlje. They threatened him and his family, ordering them to leave or they would be killed. They took Ruhan Ruhani’s son, Nehat, away for questioning; he has never been found. Ruhan Ruhani immediately reported the incident to UNMIK Police, and named one of the KLA soldiers that he had identified.

Documents in the investigative file revealed that the case was logged by the MPU on 23 June 2002. A further report in December 2004, indicated that KPS officers attached to the MPU had visited Ruhan Ruhani’s house, but found that the family had left Kosovo. In a subsequent telephone conversation, Ruhan Ruhani again named one of the KLA soldiers, and a person who had brought the soldiers to the house. However, neither of these men was recorded as a suspect or witness, nor was there any further indication of any subsequent attempt to interview them.

The Panel found that UNMIK had “failed to carry out an adequate and effective investigation into the circumstances of the abduction of Mr Nehat Ruhani”. They also found a violation of Article 3 in that “the complainant suffered severe distress and anguish for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with his complaint and as a result of his inability to find out what happened to his son”.

THE ABDUCTION AND PROBABLE KILLING OF MR D.P. AND MR MS. Đ.⁵⁷

This complaint was brought by S.P. and V. Đ., the wives of D.P and Ms. Đ, who have not been seen since they were allegedly abducted by members of the KLA from their village of Nerodime e Poshtme/Donje Nerodimlje village, Ferizaj/Uroševac Municipality. On 17 June, D.P was taken away “for questioning” several times, and was assaulted: the last time he was taken away, he did not return. S.P tried to report the abduction to a KFOR patrol a few days later, but was prevented from doing so by members of the KLA who were present. On 24 or 25 June, having left the village after further threats, S.P reported the abduction to UNMIK police in Ferizaj/Uroševac, and later to KFOR. Mrs V. Đ told the panel that she had left the village on 20 June 1999: her husband remained behind. According to information provided by her brother-in-law, that evening Ms. Đ. was taken away by unknown persons for an “informative” interview, indicating that he would be allowed to return home. Md.Đ., another brother of Mr Ms.Đ., was also allegedly taken for an “informative interview”. Neither has been seen since.

The investigative files presented by UNMIK revealed that no statement was ever taken from S.P, who was an eye-witness to her husband’s abduction, or any genuine attempts made to contact her after she moved to Serbia. Nor did investigators make any links between the abduction of D.P. and the abduction of Mr Ms.Đ. and his brother. In the latter case, the Panel found, “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”.⁵⁸ In August 2005, Mrs S.P lodged a criminal complaint with Prishtinë/Priština District Public Prosecutor and the CCIU, again providing the name of the alleged perpetrator. There was no further evidence of any investigation.⁵⁹

The panel found that the rights of S.P. and V. D. under Article 3 had been violated, on the basis that they had: “indeed suffered serious emotional distress since their husbands’ abduction”; that they had tried every authority, but “have never received any explanation or information as to what became of their husbands following their abduction”; that there was no evidence of any communication with them by UNMIK; and that their husbands were still missing. The Panel concluded: “...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”.

THE ABDUCTION OF SVETISLAV NEDELJKOVIĆ⁶⁰

Svetislav Nedeljkić was abducted on 3 July 1999 while he was travelling with his friend, Mr B.R., to collect his possessions from a friend’s apartment in Lipjan/Lipljan. His wife, Snežana Milenković, immediately reported the crime to KFOR, UNMIK and the ICRC. In July 2000 UNMIK police interviewed Snežana Milenković and Mr B.R., who gave them the name of two suspects and another person who had witnessed the abduction. In April 2001, UNMIK Police attempted to contact potential witnesses and a possible suspect, and re-interviewed Snežana Milenković and Mr B.R. In November 2001, Snežana Milenković was shown clothing from a body exhumed in October, but it was not that of her husband. Finally in November and December 2001, UNMIK Police contacted a witness who had claimed to have seen the body of Mr Nedeljkić on 18 July 1999, but he denied that this was the case. There was no further evidence of investigation, or contact with Snežana Milenković.

The Panel found that UNMIK had violated Snežana Milenković’s rights under both Article 2 and Article 3 of the ECHR. The fate and whereabouts of Svetislav Nedeljkić still remain unknown.

THE ABDUCTION AND KILLING OF DIMITRIJE MILENKOVIĆ AND ALEKSANDAR MILENKOVIĆ⁶¹

On 16 June 1999, Dimitrije Milenković and Aleksandar Milenković were abducted, along with four other men, on the road between Obiliq/Obilić and Mazgit village, where their bodies were found in a drainage ditch on 19 June. KFOR took the six bodies to the morgue in Prishtinë/Priština and they were later buried in “Dragodan” cemetery.⁶² Snežana Milenković, the wife of Dimitrije and mother of Aleksandar, reported them missing to UNMIK, KFOR, and the ICRC.

Files provided to the HRAP by UNMIK under conditions of confidentiality showed that the CCIU opened an investigation and in October 1999, recommended the location of the family members who had identified the bodies (from photographs), and the people who had found the bodies. There was no indication as to whether this took place, but 4 October 1999, the CCIU recommended that “the case be placed on inactive until further information is obtained.” According to a handwritten note, on 1 November 1999, the case was apparently closed.

However in 2002, the WCIU reported that they had taken a witness statement from Momčilo Milenković, (Dimitrije’s other son), examined the area where the bodies were found, carried

out interviews to locate persons who could remember the incident and requested a video of the crime scene from KFOR. A December 2002 entry suggests that a WCIU investigator intended to travel to Serbia to take statements from the complainants, although there is no further indication as to whether this took place. On 17 May 2004, the mortal remains of Dimitrije Milenković and Aleksandar Milenković were re-exhumed, and on 26 June 2004 they were returned to their family. The investigative file contained notes indicating some further investigation in 2004, and possibly in 2007.

The Panel concluded: “that pursuant to United Nations Security Council Resolution 1244 (1999) UNMIK from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute the abduction and killing of Dimitrije Milenković and Aleksandar Milenković, and that its failure to do so constitutes a further serious violation of the human rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined”.

THE ABDUCTION AND DEATH OF MR ZVONKO MARINKOVIĆ⁶³

Zvonko Marinković has not been seen since 24 June 1998, when he failed to return from a business trip to Belgrade, along with his colleague, Mr J.P. According to J.P.’s wife, Svetlana Marinković, they were last seen in Carralevë/Crnoljevo in Shtime/Štimlje municipality.

Svetlana reported her husband missing to the OSCE Kosovo Verification Mission, the Serbian Red Cross, and the ICRC, who passed on the report to UNMIK in October 2001 and February 2002; in 2002 the MPU opened a missing persons case file.

The mortal remains of Zvonko Marinković and J.P. were discovered on 28 May 2003, in Rancë/Rance village in Shtime/Štimlje Municipality.⁶⁴ Zvonko Marinković’s remains were identified and returned to Svetlana Marinković in December 2004.

Although J.P.’s wife had apparently provided further information which was included in a UNMIK War Crime Unit/Missing Persons Section file report 7 January 2005, J.P.’s case was also closed in December 2004. The HRAP found no evidence that UNMIK had ever investigated Zvonko Marinković’s (or J.P.’s) abduction and death; or taken any measures to bring the perpetrators to justice; or informed Svetlana Marinković of any developments.

THE ABDUCTION OF DR ANDRIJA TOMANOVIĆ⁶⁵

Dr Andrija Tomanović had worked at the Clinical Hospital Centre in Prishtinë/Priština since 1963. On 24 June 1999 he called his daughter to say he was on his way home; he has not been seen since. His wife, Verica Tomanović, made repeated appeals to the authorities from July 1999 onwards.⁶⁶

Although the UNMIK police file suggested that some investigation took place between 1999-2000, the HRAP found no indication of concrete action until 2002, when UNMIK received statements taken in Serbia from the doctor’s former colleagues. The police contacted Verica Tomanović and some of Andrija Tomanović’s former colleagues in 2004, but no formal statements were included in the investigative file, which included the first name of a suspect, which did not appear to have been followed up. There are no further entries.

The HRAP found that UNMIK had not taken all reasonable steps to identify the perpetrators and to bring them to justice, that the investigation was not adequate and failed to meet the requirements of promptness, expedition and effectiveness, required by Article 2.

In also finding a violation of Article 3, the panel noted that there had been no communication between UNMIK and the family after 2004, and concluded that “the complainants suffered severe distress and anguish 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 Dr Tomanović”.

3.3 SRSG RESPONSES TO THE HRAP

In its Annual Report for 2011, the HRAP noted continued good cooperation with the SRSG, including in the preparation of professional and timely responses. However the HRAP also noted that “for some time now the SRSG has failed to react to opinions issued by the Panel in the manner required by Regulation 2006/12”. They reported that, “In every complaint to date in which the panel has found a violation, the Panel has recommended that UNMIK take immediate and effective measures to implement its recommendations and to inform the complainant and the panel about further developments in the case. However, UNMIK’s lack of information about the implementation of the panel’s recommendations has become increasingly worrying”. There had been no significant improvements by 2012.⁶⁷

In the light of the SRSG’s failure to adequately respond to, and implement, previous opinions given by the Panel, Amnesty International is concerned that the relatives of the missing in the cases described above may be denied access to justice and reparation.

However, with respect to access to justice, UNMIK is no longer in a position to investigate or prosecute these cases. UNMIK’s responsibilities for police and justice ended on 9 December 2008, when EULEX assumed full operational control over the rule of law, including the investigation and prosecution of crimes under international law.⁶⁸

Thus the SRSG, in his response on 1 March 2013 to the HRAP’s opinion in the case of S.C., stated that: “UNMIK will, as recommended by the Panel, continue to urge EULEX and other competent authorities to continue to take all possible steps in order to ensure that the criminal investigation into the disappearance [sic] and killing of the Complainants family members is continued and that the perpetrators are brought to justice”.⁶⁹

Amnesty International also urges EULEX to promptly open investigations into the cases of alleged abductions and killings considered by the HRAP, as well as other cases of post-war abduction and murder.

4. THE RIGHT TO ACCESS TO JUSTICE

Amnesty International considers that between June 1999 and December 2008 UNMIK international police and prosecutors, who were charged with the investigation of crimes under international law, failed to initiate prompt, effective, independent, impartial and thorough investigations into many, or perhaps even the majority of reports of enforced disappearances and abductions.

From 1999 to 2008, Amnesty International followed UNMIK's progress (or lack of it) in a number of emblematic cases of enforced disappearance and abduction. In five cases, involving the enforced disappearances of 27 ethnic Albanians, no-one was brought to justice; in 10 cases, involving the abduction of 13 Serbs and Roma, only one perpetrator was brought to justice, but by the Serbian authorities.⁷⁰

EULEX inherited 1,187 war crimes cases which had not been investigated by UNMIK. EULEX investigators informed Amnesty International that in 2009 that some UNMIK case files related to enforced disappearances or abductions contained merely a single sheet of paper giving the name of the missing person. Further information suggests that certain files were deliberately "lost", whilst in other cases - in the absence of proper control of documentation - information and evidence collected by UNMIK police merely disappeared.

As a result, very few of those suspected of criminal responsibility for the war crimes and crimes against humanity which took place in Kosovo during and after the armed conflict have been brought to justice in international or domestic courts, and a climate of virtual impunity persists.

In 2006, following its consideration of UNMIK's implementation of the International Covenant on Civil and Political Rights (ICCPR) in Kosovo,⁷¹ the Human Rights Committee expressed similar concern about UNMIK's failure to address impunity, including in "all cases of disappearances and abductions". The Human Rights Committee made the following recommendations to UNMIK: "UNMIK, in cooperation with the PISG [Provisional Institutions of Self-Government], should effectively investigate all outstanding cases of disappearances and abductions and bring perpetrators to justice. It should ensure that the relatives of disappeared and abducted persons have access to information about the fate of the victims, as well as to adequate compensation".⁷²

The SRSG has justified any failures by UNMIK in this respect, on the basis that: "an interim administration, such as UNMIK, operating in a post-conflict environment where justice institutions must be built from scratch, cannot be held to the same standards required from a functioning state".⁷³ This claim sits uncomfortably alongside UNMIK's responsibilities under UN SC Resolution 1244/99, and in particular under para.11(j) which charged UNMIK with the responsibility for "protecting and promoting human rights."⁷⁴

Like the HRAP, Amnesty International considers the failure of UNMIK to conduct prompt, impartial independent and thorough investigations into reports of abductions in Kosovo is not

in compliance with these responsibilities, in particular with regard to right to an effective remedy.

In accordance with international law and standards, the relatives of those abducted and disappeared in the context of the armed conflict in Kosovo have the right to access to justice and to adequate and effective reparation, which should be proportionate to the gravity of the crimes committed and the harm suffered.

5. THE RIGHT TO REPARATION

*“The most serious unresolved problem in cases dealt with by the Panel continues to be a lack of will within the UN system to assure appropriate compensation and other reparations to victims of human rights violations found by the Panel. Although years have passed, the situation remains unmovable. The Panel is unaware of any facts indicating that any material activities have been taken in this respect. The Panel’s recommendations, especially those referring to financial compensation, are being ignored while victims are left only with the satisfaction that the Panel has vindicated their claims”.*⁷⁵

In each of the cases outlined above, the HRAP recommended that UNMIK provide reparation, in the form of adequate compensation and other appropriate measures.

In addition to recommendations that the SRSG ensure that appropriate compensation be provided to claimants (discussed in more detail below), the HRAP has also recommended other forms of reparation. The HRAP has recommended for example, that the SRSG make a public apology to the complainant and her/his family. This is one of the five forms of satisfaction, set out in the UN 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, which are discussed in more detail below.⁷⁶

The HRAP has also recommended that UNMIK: “Takes appropriate steps towards the realisation of a full and comprehensive reparation programme”. Amnesty International considers that any such reparation programme should include rehabilitation, defined under the UN Basic Principles and Guidelines as including: “medical and psychological care as well as legal and social services”.⁷⁷

Amnesty International considers this to be of particular significance for the relatives of missing persons, who may continue to lack the medical or psychological care they deserve, for the pain and suffering they have suffered as a result of the loss of their family member, considered by the ECtHR to be a violation of the prohibition on inhumane and degrading treatment.

However, Amnesty International remains deeply concerned that the relatives of the missing may be denied their right to an effective remedy and reparation, as set out in Article 13 of the ECHR, including for the pain and suffering caused by the acts and omissions of UNMIK.

In one of the first complaints reviewed, and published by the panel in November 2008, the HRAP found there had been a violation of the right to life guaranteed under Article 2 of the ECHR, (through a failure to conduct an adequate investigation), and ordered that the victim (the husband of a murdered ethnic Albanian woman) be awarded adequate compensation for his suffering.⁷⁸ No such compensation has ever been paid.

5.1 THE OBLIGATION TO MAKE REPARATION

The obligation to make reparation is well recognised under international law. Reparation is the term for the concrete measures that should be taken to address the suffering of the

survivors and victims and to help them rebuild their lives. The aim of reparation measures is to “as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”⁷⁹ Of course, in situations where victims suffer serious harm or when family members are killed, it is impossible to fully restore them to the situation which existed before the violation occurred. Nevertheless, the obligation remains to ensure that as much as possible is done to address the suffering of the victims.

The right to reparation is clarified in the UN 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 (UN Basic Principles), which were adopted by UN General Assembly resolution 60/147 of 16 December 2005.

Principle 11 of the UN Basic Principles explains that the right to a remedy entails three elements: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. The five forms of reparation - restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition - are further elaborated in Articles 19-23.⁸⁰

The principle of reparation is also widely reflected in the jurisprudence of international and regional human rights bodies, including the UN Human Rights Committee and the European Court of Human Rights, which have repeatedly awarded non-pecuniary or moral damages for a wide variety of suffering incurred by human rights violations including enforced disappearances.⁸¹

The European Court has awarded non-pecuniary damages for relatives of those who have been the subject of disappearances (*Kurt v Turkey* (1998), *Kaya v Turkey* (2000)). The Court has awarded damages for a wide variety of suffering including anxiety (*Konig case* (1980)); distress, ‘isolation, confusion and neglect’ (*Artico case* (1980)); abandonment, feelings of injustice, impaired way of life, and ‘harassment and humiliation’ (*Young, James and Webster* (1981)).⁸²

Even more significantly in the context of Kosovo are the awards made by the Human Rights Chamber for Bosnia and Herzegovina (BiH).⁸³ In *Palić v. Republika Srpska* (2001), the Republika Srpska was ordered to pay Esmā Palić DM 15,000, by way of compensation for her mental suffering caused by the disappearance of her husband, and in respect of her husband, DM 50,000 by way of compensation for non-pecuniary damage; in *Unković v. Federation of BiH* (2001), the Federation was ordered to pay the applicant DM 10,000, by way of non-pecuniary compensation for his mental suffering.

5.2 UNMIK’S FAILURE TO GUARANTEE REPARATION

“The Panel has also recommended to the SRSG that he take appropriate steps towards the payment of adequate compensation to the complainant for moral damage and to take appropriate steps towards the realization of a full and comprehensive reparation programme. In this regard, the SRSG wishes to recall that the acts in question relate to activities carried out by the institutions established under the interim administration of Kosovo. As such, had UNMIK continued to have control over these institutions today, UNMIK would have been in a position to refer the Panel’s recommendation to those institutions for appropriate action. The SRSG is prepared to discuss the possibility of setting up a mechanism to deal with such matters with the

relevant authorities at the appropriate juncture”.⁸⁴

On 7 March 2013, Amnesty International wrote to the SRSG, following publication of the HRAP’s initial opinions, urging him to ensure that the relatives of the missing (the complainants) are provided with adequate, effective and prompt reparation for the harm they have suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as defined in Articles 19-23 of UN Basic Principles and Guidelines.

In his response, the SRSG stated, “...it is an irrefutable fact that UNMIK’s capacity to pay immaterial damages has ceased to exist and [it] now falls upon local Kosovo authorities having assumed exclusive control over public administration in Kosovo”.⁸⁵

Amnesty International considers this response, and the response in the case of S.C. (see box, above) to constitute an extraordinary attempt by UNMIK to deny its liability for violations of the very human rights standards that it was created to uphold and obliged to respect. It was unquestionably UNMIK police, rather than the Kosovo authorities, that were invested with the responsibility for the investigation of cases of missing persons. The obligation to ensure reparation for the failure to do this must therefore fall on UNMIK itself.

As far as Amnesty International is aware, only in one case considered by the HRAP⁸⁶ has compensation been paid. This was awarded to seriously injured victims and relatives of two men killed by unidentified members of a Romanian Police Unit, under UNMIK’s control, using out-of-date rubber bullets. However, in that case, the UN awarded compensation (as only one element of reparations), in a separate process, outside the HRAP, under Section 29 of the UN Convention on the Privileges and Immunities of the UN.⁸⁷

Liability toward the claimants in that case was based on General Assembly (GA) Resolution 52/247 of 26 June 1998 on “Third-party liability: temporal and financial limitations”, which covers only economic losses.⁸⁸

Amnesty International considers that GA Resolution 52/247 provides an inadequate legal basis for guaranteeing an effective remedy to victims of serious human rights violations by UN entities. As Massimo Morati, (leader of a project providing legal assistance to Serbs displaced from Kosovo, including the relatives of missing persons), observed, “This means that UNMIK can, for example, reimburse a farmer if a UN vehicle runs over his chickens, but it cannot provide redress to individuals like S.C. for the non-pecuniary harm suffered due to the faulty investigation into the disappearance of her family members”.⁸⁹

However, Resolution 52/247 was adopted before the GA adopted the UN 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 which recognizes that victims should be provided with compensation for “any economically assessable loss”. This clearly includes moral damage, pain and suffering.

It has already been noted that the SRSG considers that UNMIK has no obligation to pay such compensation. However, and with respect to Resolution 52/247, in 2012, in his decision on the Panel’s opinion in the complaint of Shaip Canhasi, the SRSG, provided a different explanation to that given in the case of S.C., and to Amnesty International, indicating the

possibility of a review of the UN's position on compensation:

".. the Panel is aware that current United Nations General Assembly instructions on compensations does not permit the United Nations Organization and its mission to pay compensation other than for material damage or physical harm. Consequently UNMIK is not in a position to pay compensation for any human rights violations that may have occurred in this matter. UNMIK will continue to draw the attention of the United National General Assembly to a need for a review of the current compensation rules, which exclude payment of compensation for non-pecuniary damage".⁹⁰

Amnesty International is not aware of any measures taken to review the UN's position on compensation, but recognizes the muted frustration expressed by the panel, in their opinion in the complaint of Svetlana Jočić, and successive complaints, where they state that it would be 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" 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".

6. CONCLUSIONS AND RECOMMENDATIONS

Amnesty International considers that in re-establishing the rule of law in post-conflict Kosovo, the Security Council placed a responsibility on UNMIK to set an example, including in the application of human rights standards, determined by UNMIK to be applicable in Kosovo, and set out in successive UNMIK Regulations, including that establishing the HRAP.

In June 2009, former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, stated that: “When international organisations exercise executive and legislative control as a surrogate state they must be bound by the same checks and balances as we require from a democratic government”. Noting that, “So far, no compensation has yet been paid following an adopted opinion of the Panel”, he urged that “UNMIK should now look at the legacy of its actions in Kosovo and stand ready to provide compensation and redress for violations of human rights”.⁹¹

In the absence of any other effective remedies in Kosovo available to those whose rights have been violated by UNMIK, Amnesty International urges the SRSG:

- To use the power invested in him by the UN, and the discretion afforded to the office of the SRSG, to ensure that, in accordance with international standards, those who the HRAP considers have had their rights violated by UNMIK are provided with access to a remedy, including access to justice, and to adequate and effective reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- To conclude an agreement with EULEX in order to ensure the fulfilment of the HRAP’s recommendations that EULEX and other competent authorities (including the SPRK) should open or continue criminal investigations into cases of missing persons brought before the HRAP, so that those suspected of criminal responsibility are brought to justice in fair trials;
- To ensure that UNMIK makes sufficient funds available to provide the relatives of the missing with adequate and effective compensation or moral damages, when recommended by the HRAP, including in cases of violations of Article 3 of the ECHR, adequate and effective compensation for their pain and suffering;
- To give the same consideration to all other complaints decided by the HRAP, in which recommendations relating to investigations and reparations, are made by the HRAP to the Office of the SRSG.

Amnesty International also urges EULEX police and prosecutors to investigate all outstanding cases of post-war alleged abductions and murders, including those brought before the HRAP, and those transferred by the SPRK to local courts.

ENDNOTES

¹ This comment appears in several of the HRAP's Opinions, see for example, Case 312/09, Momčilo Milenkovič, v. UNMIK, Opinion, adopted 6 June 2013, para 87. Each of the HRAP's Opinions cited in this report are available at <http://www.unmikonline.org/hrap/Eng/Pages/Cases-by-Date.aspx>

² See for example, Amnesty International: *FRY (Kosovo): A Broken Circle: "Disappeared" and Abducted in Kosovo Province*, November 1999, AI Index: EUR 70/106/99; updated at <http://www.amnesty.org/en/library/info/EUR70/037/2000/en>; *Burying the Past: Impunity for enforced disappearances and abductions in Kosovo*, <http://www.amnesty.org/en/library/info/EUR70/007/2009/en>

³ Victims include the disappeared or abducted person and any other individual who has suffered harm as the direct result of an enforced disappearance or abduction - which of course includes, but it is not limited to, the relatives of missing persons.

⁴ *Kosovo: Time for EULEX to prioritize war crimes*, see especially, pp. 16-18, <http://www.amnesty.org/en/library/asset/EUR70/004/2012/en/3090bbe1-6da2-43af-9415-ae06fa3a54a2/eur700042012en.pdf>.

⁵ S/RES/1244 (1999) of 10 June 1999, para.11(j).

⁶ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, (S/1999/779), 12 July 1999, para.42.

⁷ Amnesty International distinguishes between enforced disappearances carried out by state actors and abductions by non-state actors.

⁸ *Burying the past*, *op.cit.* pp.41-46.

⁹ Article 1.2, UNMIK Regulation No. 2006/12 On the Establishment of the Human Rights Advisory Panel, 23 March 2006, http://www.unmikonline.org/hrap/Documents%20HRAP/Regulations%20Eng/RE2006_12.pdf.

International standards applicable in Kosovo were set out in Section 1.3 of UNMIK Regulation 1999/24, and included the Universal Declaration of Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; the International Covenant on Civil and Political Rights and the Protocols thereto; the International Covenant on Economic, Social and Cultural Rights; the 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 International Convention on the Rights of the Child.

¹⁰ Letter sent to the SRSG by Amnesty International in March 2013. A reply was received from the SRSG, dated 14 March 2013.

¹¹ Amnesty International: *Time for EULEX to prioritize war crimes*, <http://www.amnesty.org/en/library/info/EUR70/004/2012/en>

¹² In January 2011, EULEX opened a preliminary investigation into allegations relating to the abduction

of Serbs in 1999 and their subsequent transfer to Albania. In June a Brussels-based EULEX Task Force was approved to conduct the investigation, and in August 2011, John Clint Williamson, was appointed as Lead Prosecutor for the Special Investigative Task Force. The Task Force has yet to report its findings. In Kosovo, EULEX has yet to conclude proceedings against Fatmir Limaj and other co-defendants, alleged to have “violated the bodily integrity and health of an unspecified number of Serb and Albanian civilians and Serb prisoners of war held in a detention centre in the village of Klečka.”

¹³ According to a letter to Amnesty International from EULEX, as of January 2013, the number of cases was 59, due to previous double counting.

¹⁴ The SPRK is invested with exclusive competence to investigate and prosecute a range of crimes set out in the Provisional Criminal Code of Kosovo (PCCK), which entered into force on 6 April 2004. These include the following “Criminal Offences against International Law”: Article 116 – Genocide; Article 117 - Crimes against humanity; and Articles 118-121 - war crimes in grave breach of the Geneva Conventions and other crimes against international law. The SPRK also has competency over other serious crimes including serious inter-ethnic crime, Terrorism and Organized Crime, and a range of subsidiary competences over other offence, Law no.03/L-052, Law On the Special Prosecution Office of the Republic of Kosovo, adopted 13 March 2008, http://www.gazetazyrtare.com/e/gov/index.php?option=com_content&task=view&id=143&Itemid=56&lang=en

¹⁵ Some 28 per cent of the 527 complaints registered by the HRAP between 2006-2010, <http://www.unmikonline.org/hrap/Eng/Pages/Cases.aspx>

¹⁶ As amended by Regulation No. 2007/3, Amending UNMIK Regulation No. 2006/12, On the Establishment of the Human Rights Advisory Panel.

¹⁷ In accordance with UNMIK Regulation No. 2006/12, the panel, which sits in Pristina (s.4.1), has three members, one of whom is a woman (s 4.2); they are “international jurists of high moral character, impartiality and integrity with a demonstrated expertise in human rights, particularly the European system”,(s.4.3); and are appointed by the SRSG, “upon the proposal of the President of the European Court of Human Rights (s.5.1).

¹⁸ See for example, Case No. 04/08, Opinion of 12 November 2008; *HRAP Annual Report*, 2010, p.39. See also *HRAP Annual Report*, 2012, para. 88, “Since 2010, UNMIK has published 23 press releases in response to the 92 opinions adopted by the Panel”.

¹⁹ HRAP, *Annual Report 2012*, p.10, http://www.unmikonline.org/hrap/Eng/Documents/Annual_Report_2012.pdf. In 2011, the HRAP found admissible more than 60 cases, some involving multiple victims, in which complainants alleged the “Lack of an Effective Investigation by UNMIK Regarding a Murder/Missing Person Case Related to the Hostilities”. *Annual Report 2011*, pp. 15-16, http://www.unmikonline.org/hrap/Eng/Documents/Annual_Report_2011.pdf.

²⁰ The following paragraph, along with additional explanation, is included in each complaint, and explains the legal basis of the HRAP’s examination of each case, “The [European Court of Human rights] 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”.

²¹ The HRAP expressed concern in their 2011 Annual Report that (although the SRSG had made no previous objections in such cases), “toward the end of the reporting period, UNMIK provided a number of arguments challenging the admissibility of Article 3 in regard to UNMIK’s obligations”.

²² In some cases, separate complaints were brought by several family members.

²³ Case no. 46/08, Snežana Zdravković against UNMIK, Opinion, adopted 25 February 2013; concerning the abduction and killing of Mr Tomislav Marković,

²⁴ Each opinion includes the following sections: proceedings before the panel, the facts (including general background, the circumstances of the particular complaint, and an examination of the investigation; the complaint itself; the law in relation to the convention and applicable law in Kosovo; submissions by the parties, and the panel’s assessment – based in detail on the case law of the ECtHR, and its applicability in each case. Each opinion concludes with comments and a series of recommendations to UNMIK.

²⁵ For persons still missing, see <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx>

²⁶ Exhumations were initially conducted by investigators working for the International Criminal Tribunal for the former Yugoslavia (ICTY), but in the majority of cases bodies were reburied without being identified. From June 2002, exhumations were conducted by the UNMIK Office of Missing Persons and Forensics (OMPF), which was also responsible for the identification of mortal remains – assisted by the International Commission for Missing Persons (ICMP), which carried out identifications based on DNA analysis.

²⁷ “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 § 66 above, at § 46; in the same sense ECtHR [GC], Varnava and Others v. Turkey, cited in § 43 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 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).” See for example. Case No. 112/09, Mirjana Bogičević against UNMIK, adopted 14 March 2013, para. 68.

²⁸ “In all cases, however, the victim’s next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see Ahmet Özkan and Others v. Turkey, cited in § 81 above, at §§ 311-314; Isayeva v. Russia, cited above, §§ 211-214 and the cases cited therein).” ECtHR [GC], Al-Skeini and Others v. United Kingdom, no. 55721/07, judgment of 7 July 2011, § 167, ECHR 2011”, see, for example, S.C against UNMIK, para. 84.

²⁹ Case No. 02/09, S. C. against UNMIK, Opinion, adopted 6 December 2012. Although there was an Article 3 issue in this and other cases included in this section, the Panel could not look into it because

of its jurisdiction *ratione temporis*. According to the panel, "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.", *ibid*, para.55.

³⁰ *Ibid.*, para. 49.

³¹ *Ibid.*, paras.35-6, 38-41.

³² *Ibid.*, paras. 43-47.

³³ Prior to their return to the family, the bodies would have been held in the mortuary run by the UNMIK Office of Missing Persons and Forensics (OMPF).

³⁴ Case 52/09, B.A. v. UNMIK, Opinion, adopted 1 February 2013; quotation from para. 23; see also para. 26.

³⁵ Case No. 45/09, C.S. against UNMIK, Opinion, adopted 25 April 2013.

³⁶ Case No. 98/09, Jordanka Pavić against UNMIK, Opinion, adopted 26 April 2013.

³⁷ Case No. 112/09, Mirjana Bogičević against UNMIK, Opinion, adopted 14 March 2013.

³⁸ "However, it is not clear whether this research was undertaken by UNMIK or by EULEX WCIU at the moment of reviewing the case file", *ibid.*, para.29.

³⁹ Case No. 123/09, Slavica Ristanović against UNMIK, Opinion, adopted 14 March 2013.

⁴⁰ *Ibid.*, para. 82, "In particular, there is no indication that UNMIK Police undertook in this respect any investigative steps such as: interviewing the complainant and other family members, interviewing the named person, interviewing potential witnesses among neighbours, searching the victim's flat from where he had been abducted, compiling a list of properties that could have gone missing from the flat, attempting to identify and locate the person that had informed the complainant about her husband's death."

⁴¹ "List of Persons Who Committed [sic] Number of Abductions in Kosovo and Metohija", published by the Coordination Centre of Federal Republic of Yugoslavia.

⁴² Case no. 92/09, Marija Filipović against UNMIK, Opinion, adopted 25 April 2013.

⁴³ *Ibid.*, para 32, "On an unspecified date in 2009, the criminal report concerning the killing of Panta Filipović was dismissed by an International Prosecutor of the EULEX Special Prosecutor's Office, who wrote: "it is evident from the criminal report that there is no reasonable suspicion that the suspect committed the criminal offence", and that "it is not reasonably likely that further investigations by the police may provide sufficient information".

⁴⁴ Cases Nos. 67/09 & 140/09, Rada Đukanović and Radmila Đukanović against UNMIK, Opinion, adopted 25 April 2013.

⁴⁵ Case No. 268/09, Slavica Nedeljković against UNMIK, Opinion, adopted 14 March 2013.

⁴⁶ Case No. 44/09, J. D. against UNMIK, Opinion, adopted 14 March 2013. A complaint under Article 3 was found inadmissible.

⁴⁷ Case No. 272/09, Jagoda VUKIČEVIĆ against UNMIK, Opinion, adopted 14 March 2013.

⁴⁸ “The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise per se issues under Article 2.”, *Ibid.* para 45. “The Panel infers from the absence of any 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 ...; the file was not properly handed over to EULEX; or UNMIK failed to retrieve the file from the current custodian”. *Ibid.*, para. 71.

⁴⁹ Case No 04/09, D.P. against UNMIK, Opinion, adopted 6 June 2013. As in other cases in which the body of the deceased was returned to the family before 2005, the panel did not find D.P’s complain under Article 3 admissible. In 1999 Amnesty International interviewed Petrija Piljević’s son, D.P. The abduction of Petrija Piljević subsequently became one of several emblematic cases of enforced disappearances and abductions, on which the organization campaigned – apparently to little effect - for over a decade.

⁵⁰ *Cyprus v Turkey, (10 May 2001), Judgment of the European Court of Human Rights*, paras. 136 and 156-158. This approach was later confirmed by the Grand Chamber of the Court in the case of *Varnava and others v Turkey, (18 September 2009)*, paras. 187-194. Further relevant jurisprudence of the court is cited in the HRAP’s assessment of each case.

⁵¹ *Quinteros et al. v. Uruguay, Communication No. 107/1981*, U.N. Doc. CCPR/C/OP/2, 1990.

⁵² Case no 34/09, Svetlana Jočić v UNMIK, Opinion, adopted 23 April 2013.

⁵³ His mother refused to believe the DNA identification and claimed that the belt which accompanied the remains was not her son’s.

⁵⁴ Svetlana Jočić v UNMIK, para. 98, “The complainant alleges that the lack of information and certainty surrounding the disappearance of her son, particularly because of UNMIK’s failure to properly investigate his disappearance, caused mental suffering to herself and her husband, whose untimely death was to a large extent due to this suffering”.

⁵⁵ Similar recommendations are made by the Panel in each of the cases summarised below.

⁵⁶ Case No. 85/09, Ruhan Ruhani against UNMIK, Opinion, adopted 5 June 2013.

⁵⁷ Case No. 06/09 and Case No. 55/09, S.P. and V. Đ. against UNMIK, Opinion, adopted 6 June 2013.

⁵⁸ *Ibid.*, para.100.

⁵⁹ “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”, *Ibid.*, para.41.

⁶⁰ Case No. 46/09, Nadica Nedeljković against UNMIK, Opinion, 6 June 2013.

⁶¹ Case 169/09 Snežana Milenković v. UNMIK; Case 312/09, Momcilo Milenković v UNMIK, Opinion, adopted 6 June 2013.

⁶² “According to information provided by UNMIK, family members identified the bodies of Dimitrije Milenković and Aleksandar Milenković after British KFOR personnel presented them with photographs of the victims; the mortal remains were scheduled to be released to the family on 29 June 1999 for burial. However, the complainants did not receive the mortal remains at that time. It appears that KFOR unofficially informed the complainants that the mortal remains had been buried in “Dragodan” cemetery in Prishtinë/Priština, but that thereafter KFOR neither contacted the complainants to confirm the specific location of the mortal remains, nor made further arrangements for their transport and handover.” *Ibid.*, para 28.

⁶³ Case no. 94/09, Svetlana Marinković against UNMIK, Opinion, adopted 25 April 2013.

⁶⁴ According to a document, dated 31 October 2003, the Serbian Ministry of Internal Affairs had filed a criminal report against unknown perpetrators with the District Public Prosecutor’s Office in Prizren, alleging the abduction of Zvonko Marinković by KLA members.

⁶⁵ Cases Nos 248/09, 250/09 and 251/09, Dušan Tomanović, Jelena Tomanović-Koković and Verica Tomanović against UNMIK, Opinion, adopted 25 April 2013.

⁶⁶ His wife, Verica, told Amnesty International: “*My husband was devoted to saving lives, no matter what their nationality or religion. He was a great man and I am proud of him: a humanist, a surgeon, a member of the medical association. He stayed to carry on; he believed that [UNSC] Resolution 1244 meant something*”, Amnesty International interview with V.T., Belgrade, February 2009.

⁶⁷ HRAP, *Annual Report, 2011*, para. 71; HRAP, *Annual Report, 2012*, paras. 88-89. In 2012, in only four cases (relating to property rights) has Amnesty International noted the publication of a response from the SRSG to the HRAP’s recommendations. In such cases the SRSG agreed to approach the EU-led Police and Justice mission (EULEX), given that they had taken over from UNMIK responsibility for policing and the judicial system, and ask them to ensure that the relevant local authorities respond to the HRAP’s decision. In another case, the complainant was directed by the SRSG to file a claim with local courts. In another case, the SRSG suggested the claimant file a claim with local courts, see for example, Case 36/08, Morina, Opinion, 12 May 2012, para. 113, “... the Panel notes that the SRSG, objecting to the admissibility of the complaint, argued that the complainant could approach the Municipality of Gjilan/Gnjilane and/or KFOR, “through their administrative procedures”, in order to obtain compensation. In the absence of any legal basis or transitional agreement upon which the Kosovo authorities, including judicial authorities, have undertaken to assume the legacy of UNMIK’s responsibilities, it is unlikely that these complainants will be provided with any effective remedy. Further, Given that the majority of complainants in cases of abducted persons considered by the HRAP are Kosovo Serbs, now displaced in Serbia, the provision of a remedy seems even less likely.

⁶⁸ Statement by the President of the United Nations Security Council, 26 November 2008 (S/PRST/2008/44), http://www.un.org/ga/search/view_doc.asp?symbol=S/PRST/2008/44

⁶⁹ “SRSG’s response to the Panel’s recommendations, (in the case of S.C), 1 March 2013, <http://www.unmikonline.org/hrap/Eng/Cases%20Eng/HRAP-PR-010313%20->

[%20SRSG's%20response%20to%20the%20Panel%E2%80%99s%20recommendations.pdf](#)

⁷⁰ In September 2006 Anton Lekaj was convicted of the murder of Rexhe Shala, abducted in June 1999, (ICRC ref: BLG-804815-01) at the Special War Crimes Chamber in Belgrade. In the case of I.K., the ICTY Trial Chamber found insufficient evidence that the accused were responsible for the criminal acts related to his death, see *Prosecutor v. Ramush Haradinaj, Idriz Balaj, Lahi Brahimaj*, IT-04-84-T, 3 April 2008, paras. 298-302.

⁷¹ *Report Submitted By The United Nations Interim Administration Mission In Kosovo To The Human Rights Committee on the Human Rights Situation In Kosovo Since June 1999*, CCPR/C/UNK/1, 3 March 2006, (including the Core Common Document "CCD" and the Treaty Specific Report "TSR"), <http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.UNK.1.pdf>. UNMIK is not a state party to the ICCPR, however the HRC required UNMIK to report to the committee after Serbia in 2004 had stated that they were unable to report on implementation of the ICCPR in Kosovo.

⁷² CCPR/C/UNK/CO/1, Concluding observations of the Human Rights Committee, Advance non edited version, Kosovo (Republic of Serbia).

⁷³ Letter from SRSG to Amnesty International, 14 March 2013.

⁷⁴ In June 1999 the United Nations Interim Administration Mission in Kosovo (UNMIK) was established by UN Security Council Resolution 1244/99 (UNSCR 1244/99) and mandated to administer Kosovo. The Secretary-General of the UN further stated that: "UNMIK will be guided by internationally recognized standards of human rights as the basis for the exercise of its authority in Kosovo." Resolution 1244 (1999), Adopted by the Security Council at its 4011th meeting, on 10 June 1999, S/RES/1244 (1999), retrieved at <http://daccess-ods.un.org/TMP/658974.9.html>; S/1999/779: *Report of the Secretary-General of the United Nations Interim Administration Mission in Kosovo*, 12 July 1999, prepared pursuant to paragraph 20 of Security Council resolution 1244 (1999); the report outlined the authority, competencies, structure and main components of UNMIK, <http://daccess-ods.un.org/TMP/658974.9.html>.

⁷⁵ HRAP, *Annual Report 2012*, Foreword, p.1.

⁷⁶ Principle 22 (e), "Public apology, including acknowledgement of the facts and acceptance of responsibility". Article 22 also provides for other forms of satisfaction including : (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

⁷⁷ Principle 21, UN Basic Principles.

⁷⁸ The HRAP reported in 2010, "...the remaining twelve opinions finding a violation on the merits remain without a public response from UNMIK, including one opinion which was adopted by the Panel in late 2008 (see HRAP, Shaip Canhasi, no. 04/08 (opinion of 12 November 2008))", http://www.unmikonline.org/hrap/Eng/Documents/annual_report_2010.pdf.

⁷⁹ *Chorzow Factory Case (Germany v. Poland)*, Permanent Court of International Justice, 13 September 1928, para 125.

⁸⁰ With specific reference to compensation, Article 20 of the UN Basic Principles states that,

“Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”

⁸¹ In a number of cases since the early 1980s the UN Human Rights Committee has awarded to the victim and/or his family for any injury which he has suffered including anguish and distress caused by enforced disappearances. See, for example, *Bleier v Uruguay*, (1982) and *Quinteros v Uruguay* (1983).

⁸² This approach has also been followed by the Inter-American Court of Human Rights in awarding moral damages in a number of cases characterizing them ‘as the result of the psychological impact suffered...’, (*Velasquez Rodriguez v Honduras* (1988)). Indeed the Court has suggested that awards for emotional harm are particularly appropriate in the case of human rights violations (*Velasquez Rodriguez*) and that when the violation is sufficiently serious, the moral suffering of the victims and their families must be compensated, (*El Amparo (Reparations)* (1996)).

⁸³ The BiH Chamber also applied the ECHR in their adjudication on cases brought before them.

⁸⁴ SRSG’s response to the Panel’s recommendations, (in the case of S.C), 1 March 2013, <http://www.unmikonline.org/hrap/Eng/Cases%20Eng/HRAP-PR-010313%20-%20SRSG's%20response%20to%20the%20Panel%E2%80%99s%20recommendations.pdf>

⁸⁵ SRSG letter to Amnesty International, 14 March 2013.

⁸⁶ Case no 04/07, Balaj, Kadri (on behalf of Balaj, Mon), Xheladini, Shaban (on behalf of Xheladini, Arben), Zeneli, Zenel and Nerovaj, Mustafa. Under the UN GA Resolution, compensation was paid to the complainants only for (c) Material damages and loss of earnings, including loss of earning potential. The HRAP has not yet decided on this complaint. Amnesty International considers that the further consideration of this case by the HRAP should also allow the victims, and the relatives of the two dead men, access to further forms of reparation, to which they are entitled.

⁸⁷ This provides that: “The United Nations shall make provisions for appropriate modes of settlement of: (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party; (b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General”, <http://www.un.org/en/ethics/pdf/convention.pdf>

⁸⁸ Section 9, GA Resolution 52/247: “...in respect of third-party claims against the Organization for personal injury, illness or death resulting from peacekeeping operations, that: (a) Compensable types of injury or loss shall be limited to economic loss, such as medical and rehabilitation expenses, loss of earnings, loss of financial support, transportation expenses associated with the injury, illness or medical care, legal and burial expenses; (b) No compensation shall be payable by the United Nations for non-economic loss, such as pain and suffering or moral anguish, as well as punitive or moral damages.”, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/52/247&Lang=E

⁸⁹ <http://terraOnullius.wordpress.com/2013/03/11/the-human-rights-advisory-panel-holds-the-un-in-kosovo-responsible-for-failing-to-investigate-forced-disappearances-too-little-too-late/>

⁹⁰ SRSG's decision in the complaint of Shaip Canhasi (no 04/08), dated 27 September 2012 - four years after the Panel's recommendations in this case. Available at: http://www.unmikonline.org/hrap/Eng/Cases%20Eng/04_08%20Canhasi%20SRSGs%20Decision%2040ct12.pdf. In contrast, in a letter written in 2011 by the Under Secretary General for Legal Affairs, the UN appears to accept that UN Resolution 52/247 is applicable to the situation of the complainants, but that the claim itself does not fit into the framework. Letter from USG for Legal Affairs to Dianne Post, a lawyer acting on behalf of 143 Roma, Ashkali and Egyptians, who alleged that they had suffered lead poisoning and other damage to their health, as a result of lead contamination in the Internally Displaced Persons camps in north Mitrovica, where they had lived for more than a decade. See Case 26/08, N.M. and others, which the HRAP had held to be inadmissible in March 2010, http://www.unmikonline.org/hrap/Eng/Cases%20Eng/DC_No_26-08-2.pdf

⁹¹ "International Organisations acting as quasi-governments should be held accountable", http://www.coe.int/t/commissioner/Viewpoints/090608_en.asphttp://www.coe.int/t/commissioner/Viewpoints/090608_en.asp

**AMNESTY
INTERNATIONAL**



www.amnesty.org