

**OPINION**

**Date of adoption: 5 August 2015**

**Case No. 06/10**

**Ivica MARKOVIć**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 5August 2015,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 1 December 2009 and registered on 4 March 2010.
3. On 12 May 2010, the Panel requested the complainant to submit additional information. The complainant’s response was received on 17 June 2010.
4. On 8 November 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on the admissibility of the complaint. On 22 December 2011, the SRSG submitted UNMIK’s response.
5. On 19 February 2012, the Panel declared the complaint admissible.
6. On 21 February 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
7. On 26 March 2012, the SRSG provided UNMIK’s comments on the merits of the complaint, together with copies of the investigative files.
8. Following the Panel’s inquiries, on 4 October 2012, UNMIK requested the Archives and Records Management Section of the United Nations’ (UN) Headquarters in New York to locate and return to UNMIK a number of investigative files related to the complaints before the HRAP.
9. On 14 December 2012, UNMIK received the requested investigative files from the UN Headquarters in New York. On 17 December 2012, UNMIK presented those documents, including some documents related to this complaint, to the Panel.
10. On 2 July 2015, the Panel requested UNMIK to confirm if the disclosure of files concerning the case could be considered final. On 3 July 2015, UNMIK provided its response confirming that the Office of Legal Affairs (OLA) has disclosed all available files.
11. **THE FACTS**
12. **General background[[2]](#footnote-2)**
13. The events at issue took place in the territory of Kosovo shortly after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
14. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a “Military Technical Agreement” by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.
15. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to “promote and protect human rights” in Kosovo in accordance with internationally recognised human rights standards.
16. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
17. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbians, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
18. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,653 are listed as still missing by the International Committee of the Red Cross (ICRC) as of May 2015.
19. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.
20. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.
21. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being “well-functioning” and “sustainable”.
22. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document, which among other things reiterated the commitment of solving the fate of missing persons from all communities and recognised that the exhumation and identification programme is only part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
23. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
24. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
25. **Circumstances surrounding the abduction and killing of Mr Zoran Marković**
26. The complainant is the brother of Mr Zoran Marković.
27. The complainant states that, on 11 July 1999, Mr Zoran Marković was abducted in Prishtinё/Priština by four armed Kosovo Albanians from in front of the building where he lived, and was taken away in a vehicle.
28. The complainant indicates that he reported his brother’s abduction to the ICRC. He submits a copy of the criminal report that he filed against unidentified perpetrators with the International Prosecutor of the District Public Prosecutor’s Office (DPPO) in Prishtinё/Priština. The complaint, which bears as handwritten date 18 August 2004, states that, on 11 July 1999, Mr Zoran Marković was abducted by four unknown armed Albanians in front of the building where he lived in Prishtinё/Priština, at around 17:45 hours. He was forced into a dark blue car of “Volkswagen make/model 1”, with number plate “PR147/other” and driven in an unknown direction. It is also stated in the criminal report that the complainant was an eyewitness to the abduction of his brother.
29. On 3 August 1999, the ICRC opened a tracing request for Mr Zoran Marković and his name appears in the database compiled by the UNMIK OMPF.[[3]](#footnote-3) The entry in relation to Mr Zoran Marković in the online database maintained by the ICMP reads in relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this missing person on 06-24-2009 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters”.
30. The mortal remains of Mr Zoran Marković were located on 6 March 2007. The identification certificate for Mr Zoran Marković was issued by the UNMIK OMPF on 12 December 2009 and his remains were handed over to the complainant on 5 March 2010.

**C. The investigation**

*Disclosure of relevant files*

1. On 26 March 2012, UNMIK provided to the Panel documents which were held previously by the UNMIK MPU and WCIU. On 3 July 2015, UNMIK confirmed to the Panel that all files in UNMIK’s possession have been disclosed.
2. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

*The MPU file*

1. The first document in the file is an undated Ante-Mortem Victim Identification Form, affixed with the MPU file no. 1999-000062. Besides containing the personal details and ante-mortem description of Mr Zoran Marković, it provides the name, address and telephone number of the complainant in Serbia proper.
2. The file also contains a copy of a document with the heading “CrimeBase 98 ImageBase Technology Ltd”, which includes the basic biographical details of Mr Zoran Marković and has case no. 1999-000062 written on it. The document has an entry date of 16 November 1999 and a printout date of 28 March 2000. The document states the following:

“He was kidnapped on 11 July 1999 in front of the entrance door of the building D1-III/10, Micro settlement, Vidovdanska St 165/10, at 1645 hrs while he was going to buy bread. His brother IVICA saw everything from his balcony, and he said that four armed Albanians in civil clothes took Mr. Markovic in a car GOLF I, dark blue colour, reg. no. PR-143-… Ivica asked them where they were taking his brother and they said they would return him in 10 minutes. He reported kidnapping to KFOR patrol, 92 section KFOR in Pristina, CPT, Red Cross…”

1. The MPU file contains a memo, dated 11 February 2000, asking all UNMIK Police Regional Investigation Units, the CCIU and the ICRC for information regarding Mr Zoran Marković. The file also contains subsequent negative written responses from the RIU offices in Gjilan/Gnjilane, Pejё/Peć, Prishtinë/Priština and from the CCIU in Prishtinë/Priština. There is also a note in a Case Continuation Report of a positive response by the ICRC, dated 25 February 2000.
2. The MPU file also contains a Case Continuation Report for Mr Zoran Marković, affixed with the file no. 1999-000062. The Report contains two inputs; the first, dated 11 February 2000, states “input OK, memo to all – OK, Wait now for incoming answers”. The second input, dated 21 December 2000, states “Add page from ICRC”. There is another Case Continuation Report with the same file no., dated 30 August 2002, which states “input DVI OK”.
3. The file includes an undated document that appears to be a table taken from an ICRC report containing the name of Mr Zoran Marković, along with details of his kidnapping. The names of three other persons who were abducted under similar circumstances in different parts of Kosovo and within one day of the same event are also on this page.
4. Also in the file is an undated document that is titled “Center for Peace and Tolerance Missing People”, which provides a detailed description of the kidnapping of Mr Zoran Marković as described above.
5. The file also contains a one-page printout from the MPU database labelled “MPU Report”, dated 21 April 2004. The printout provides the personal details and ante-mortem description of Mr Zoran Marković and the date of his disappearance. It also states the information related to his kidnapping, as described above.
6. The investigative file further contains a document labelled “War Crime Unit MPU Anti Mortem Investigation Report”, started on 21 April 2004 and completed on 4 October 2004, affixed with the WCIU file no. 0359/INV/04 and cross-referenced with MPU file no. 1999-000062. The Report lists the complainant’s brother, Mr Zoran Marković, as the missing person. Under the heading labelled “Nature of Information” the Report states “On 11th July 1999, at approx. 16.45 hrs, in front of the entrance door to building D1-III, Micro Settlement, Vidovdanska Street 165/10, Pristine, [missing person] was kidnapped by four armed Albanians in civilian clothes. They took him in a dark colour VW Golf (Plate: PR-143…) [Mr Zoran Marković] was never seen again. No further information. CCIU, RIU’s sent memos with negative results”. Under the heading labelled “Further Investigation”, the Report states (original grammar and emphasis preserved):

Wednesday, 19th May 2004: memo send to liaison officer in Belgrade [NK], to contact [complainant]. [Complainant] confirmed the already known, no further information.

Wednesday, 29th September 2004, 13:00 hrs: The undersigned contacted ICMP: blood samples are given by [complainant] and registered at ICMP Belgrade.

1. Under the heading labelled “Conclusion”, the Report states “AM-Data is collected and blood samples are given. Due to lack of information the case is pending.”
2. The investigative file contains a copy of a request, dated 18 August 2004 and affixed with file no. CCIU 2000-00078, from the complainant to the International Prosecutor of the DPPO in Prishtinë/Pristina, to file criminal charges against unidentified perpetrators concerning the abduction of Mr Zoran Marković. The document states that any information with respect to the investigative measures taken to locate Mr Zoran Marković and perpetrators have been “completely inaccessible” to the complainant.
3. The file contains an UNMIK document titled “Investigation Details for Investigation Number: 0359/INV/04”, dated 4 October 2004, containing the biographical information of Mr Zoran Marković and providing a brief narrative of his kidnapping. The field titled “Request summary” states “There is a lack of information” and the field titled “Results” states “Pending”.
4. The file contains an autopsy report, dated 25 July 2007, for an autopsy that was conducted on 26 April 2007 on unidentified mortal remains, subsequently identified as those of Mr Zoran Marković. The report concludes that the cause of death was “Fire arm injuries to the head”.
5. The investigative file also contains a Comparison Table, dated 6 October 2008. According to this comparison table, the ante-mortem information of Mr Zoran Marković matched the post-mortem information gathered through the autopsy of the unidentified mortal remains conducted in April 2007. In particular, the Table highlighted that traces of injuries found on the mortal remains were compatible with the injuries to Mr Zoran Marković, as reported by the family.
6. The file includes an email, dated 8 April 2009, stating that the family of Mr Zoran Marković was visited by the Commission of Missing Persons of the Republic of Serbia, on 1 April 2009, and informed about the findings of the ante-mortem and post mortem comparison. The email also states “[t]he family recognize the clothing on the pictures and accepted identification.”
7. The file also includes a DNA identification report for Mr Zoran Marković, dated 6 April 2009, an ICMP confirmation of identity certificate, issued on 9 April 2009 and an UNMIK OMPF confirmation of identity certificate, also issued on 9 April 2009 in the name of Mr Zoran Marković, with file no. MPU 1999-000062 on it.
8. The file contains an UNMIK identification certificate for Mr Zoran Marković, dated 12 December 2009, which states that his body was found on 6 March 2007 and a death certificate, dated 4 March 2010, in the name of Mr Zoran Marković, with file no. 1999-000062. There is an UNMIK OMPF handover document, dated 5 March 2010, stating that the mortal remains of Mr Zoran Marković were handed over to the complainant on that day.

*WCIU Files*

1. The WCIU file contains a Case Analysis Report, dated 24 October 2007, which contains the name and details of the kidnapping of Mr Zoran Marković. The report states the “Current Status” as “Inactive” and the field titled “Investigator Recommendation/Opinion” as “[c]ase has been dealt by DOJ. Case to be closed. Will be reopened if new elements are discovered.” There is an additional handwritten entry to the report, dated 9 December 2007, which states “Re-reviewed report: The date, 11th July 1999, the offence happened, is out of war crime time frame. I recommend the closure of the case until new information comes to light.”
2. There is a WCIU Case Report in the file, dated 24 October 2007, with file no. 2000-00078, containing the name and details of the kidnapping of Mr Zoran Marković and details of the complainant as a witness. The field titled “Date updated” gives a date of “8/5/2016” [s*ic*].

*File from UN archives in New York*

1. The file obtained from the UN Headquarters contains additional documentation not included in the MPU or WCIU file. The first document, dated 27 February 2008, is a Case Transmittal Memorandum from WCIU to the UNMIK DOJ with case no. 2000-00078. The document states “[i]n accordance with Case Analysis Review Project agreement I am forwarding the above referenced War Crimes case for review. All original documents and photographs know [*sic*] to exist in the War Crimes Unit are contained in each file.”
2. The file contains a response memo, dated 5 March 2008, from the head of the UNMIK DOJ Criminal Division to the Head of the UNMIK WCIU, where the DOJ states that “the relevant information was not collected in the twenty four police cases that we are returning to the War Crimes Unit.” Included in this is the case involving the abduction and killing of Mr Zoran Marković. Moreover, the letter closes with the following:

“I wish to express my surprise at receiving these cases after approximately 9 years from the commission of the criminal acts, and without any relevant investigative action having been taken by the police. In any event these cases require thorough police investigation.

I am aware of your current lack of human resources to address all these cases, which is a problem shared by this office…”

1. In the final response letter in the file, dated 6 March 2008, from the WCIU to the DOJ a great deal of background to the reasons for submitting the files to the DOJ were given. The initiative was started when DOJ legal officers “questioned how the WCU could have approximately fifteen hundred cases when the DOJ records indicated there were considerably less than one hundred cases. They were both adamant that if we possessed cases that had not been delivered to the prosecutor within twenty-four hours of their receipt we were in violation of the PCPCK Article 200…”
2. The same letter provides more information with respect to the policy of handling war crimes cases;

“…[I]n December 2002 all of the war crimes cases were reviewed by representatives of DOJ and CCIU investigators…at the end of 2003 the DOJ determined that there were too many cases under investigation and appointed another review team that consisted of DOJ personnel, KFOR JAG [Judge Advocate General] officers and WCU investigators. The target was to reduce the number of active investigations to twenty cases….at the end of the review that number was increased to forty.”

With respect to the statement in the DOJ letter regarding the lack of relevant investigative action the letter states;

“I believe this statement highlights the lack of communication between our organizations…I am also concerned about the lack of progress in war crimes cases but I understand that many of these problems are the result of inadequate reporting systems and standards in the mission at the time.”

1. The letter goes on to state “In 1999 and 2000 there were a total of 407 war crimes cases reported in Kosovo. Many of these cases were reported through KFOR and various NGO’s who took a bare minimum of information concerning the event and shelved it as there were no resources to deal with that magnitude of the events…As you correctly pointed out, a number of our cases consist of a database entry, with limited information, and a note that the actual case file is missing. This problem is a result of poor file management and record keeping. We have found that a number of our cases have been handed over to the ICTY and DOJ without proper documentation.”
2. **THE COMPLAINT**
3. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and killing of Mr Zoran Marković. In this regard, the Panel deems that the complainant invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
4. The complainant also complains about the mental pain and suffering allegedly caused to him by this situation. In this regard, the Panel deems that the complainant relies on Article 3 of the ECHR.
5. **THE LAW**
6. **Alleged violation of the procedural obligation underArticle 2 of the ECHR** 
   1. **The scope of the Panel’s review**
7. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
8. In determining whether it considers that there has been a violation of Article 2 (procedural limb) the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.
9. The Panel notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, [the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf), the Convention on the Rights of the Child.

1. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
2. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above (see § 56). In the particular case of killings and disappearances in life-threatening circumstances, it is not the Panel’s role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.
3. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights “that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).
   1. **The Parties’ submissions**
4. The complainant in substance alleges a violation concerning the lack of an adequate criminal investigation into the abduction and killing of Mr Zoran Marković.
5. In his comments on the merits of the complaint, the SRSG does not dispute that UNMIK had a responsibility to conduct an effective investigation into the abduction and killing of Mr Zoran Marković**,** in line with its general obligation to secure the effective implementation of the domestic laws which protect the right to life, given to it by UN Security Council Resolution 1244 (1999) (see § 12 above) and further defined by UNMIK Regulation No. 1999/1 *On the Authority of the Interim Administration in Kosovo* and subsequently, UNMIK Regulation 1999/24 *On the Law Applicable in Kosovo,* and Article 2 of the ECHR.
6. In this regard, the SRSG stresses that this responsibility stems from the procedural obligation under Article 2 of the ECHR to conduct an effective investigation where death occurs in suspicious circumstances not imputable to State agents. He argues that, in general, when considering whether UNMIK has satisfied its procedural obligations under Article 2 of the ECHR, the Panel must take into consideration the special circumstances in Kosovo at the time.
7. The SRSG considers that the obligation is two-fold, including an obligation to determine through investigation the fate and/or whereabouts of the dead person; and an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person.
8. The SRSG argues that in its case-law on Article 2, the European Court of Human Rights has stated that due consideration shall be given to the difficulties inherent to post-conflict situations and the problems limiting the ability of investigating authorities when conducting investigations in such cases. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court in the case *Palić v. Bosnia and Herzegovina,* stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources […].”

1. In the view of the SRSG, in the aftermath of the Kosovo conflict, UNMIK was faced with a similar situation as the one in Bosnia. Many of those persons who were unaccounted for were abducted, killed and buried in unmarked graves inside or outside of Kosovo, which made very difficult locating and recovering their mortal remains.
2. In June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of its operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština. The SRSG states that, in the effort to demonstrate that crimes were systematic and widespread, the ICTY teams conducted autopsies on as many bodies as possible, carrying out little or no identification work; moreover, unidentified bodies exhumed in 1999 were reburied in locations still unknown to the OMPF. After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “ex-officio, without any broader prosecutorial strategy”. As a consequence, a large amount of unstructured information was collected.
3. The SRSG states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is “testament to the vigour of its work between 2002-2008” and that “more bodies have been located in burial sites and more identification and returns to family members are taking place, often based on information contained in UNMIK-OMPF files”. The SRSG continues that “the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an incremental one” in Kosovo as reflected in the *Palić* case referred to above. The SRSG further notes that this process was “reliant on a number of actors other than just UNMIK, for example the International Commission on Missing Persons, the International Committee of the Red Cross and local missing persons’ organisations.”
4. The SRSG further argues that fundamental to conducting effective investigations is a professional, well-trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

“UNMIK Police had to deal with the aftermath of war, with dead bodies and the looted and burned houses. Ethnic violence flared through illegal evictions, forcible takeovers of properties, the burning of houses and physical violence against communities all over Kosovo. Tempers and tensions were running high amongst all ethnic groups, exacerbated by reports of missing and dead persons. It became imperative for UNMIK Police to establish order and to quickly construct a framework to register and investigate crimes.

All of this had to be done, with limited physical and human resources. Being the first executive mission in the history of the UN, the concept, planning and implementation was being developed on the ground. With 20 different contributory nationalities at the beginning, it was very challenging task for police managers to establish common practices for optimum results in a high-risk environment.”

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to crimes. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and cultures, with limited support from the still developing Kosovo Police.
2. He further states that these investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, “[s]uch constraints inhibited the ability of an institution such as UNMIK Police to conduct all investigations in a manner, when viewed systemically, that may be demonstrated by, or at least expected from, other States with more established institutions and not dealing with a post-conflict situation.”
3. With regard to this particular case, the SRSG asserts that “UNMIK complied with its obligation to determine the fate and whereabouts of Mr. Zoran Marković, by promptly opening and pursuing an investigation on the basis of the information received by the Complainant through the CPT [Centre for Peace and Tolerance]. In the final phase of the investigation, the killing of Mr. Marković was duly certified when his mortal remains were formally identified by the MPU.”
4. The SRSG adds “[t]he lapse of years between the time of reporting the incident to UNMIK and the actual identification of the mortal remains as being those of Mr. Marković must be assessed against the broader context of UNMIK’s criminal investigations in post-conflict Kosovo, as outlined above.”
5. The SRSG concludes that “[t]he available UNMIK investigation files are not conclusive on the identification and punishment of those responsible for the disappearance and the death of Mr. Marković, due to an overall dearth of information. As illustrated above, the Complainant played a role as a witness but was not in a position to provide UNMIK’s Police with clear leads as to the identity of the perpetrators. No further witnesses of the episode came forward at any point to gather Kosovo-wide all relevant information in possession of the different police offices and operative units, including US KFOR. The investigation was followed up in 2004 with the appointment of a new investigator for the case and with contacts being pursued with the family, but to no avail, given the persistent unavailability of relevant information which the Police could have possibly used to develop and follow up investigative leads. In view of the foregoing, it is submitted that UNMIK took all reasonable steps to investigate in the instant matter, in light of the evidence available to it.”
6. The SRSG concludes that with regard to the complaint, there has been no violation of Article 2 of the ECHR.
   1. **The Panel’s assessment**
7. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) in that UNMIK did not conduct an effective investigation into the abduction and killing of Mr Zoran Marković.
8. *Submission of relevant files*

1. At the Panel’s request, on 26 March 2012, the SRSG provided copies of the documents related to the investigations subject of the present complaint, which UNMIK was able to recover. The file received by the Panel from the UN Headquarters in New York (see §§ 7 - 8) contained the copies of the same documents, as well as documents not contained in the OMPF or WCIU files. On 3 July 2015, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 9 above).
2. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005*,* § 56).
3. Furthermore, the Panel notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2 (see HRAP, *Bulatović*, no. 166/09, opinion of 13 November 2014, § 62).
4. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. However, the Panel notes that UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
5. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaint on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of15 March 2011, § 146).
6. *General principles concerning the obligation to conduct an effective investigation under Article 2*

1. The Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights *Velásquez-Rodríguez* (see Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The Panel also notes that the positive obligation to investigate has been stated by the HRC as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Articles 2 (3) (right to an effective remedy) of the ICCPR (see United Nations Human Rights Committee (HRC), General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (UN Document A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.
2. In order to address the complainant’s allegations, the Panel refers to the well-established case-law of the European Court of Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 86, Reports 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
3. The European Court has also stated that the procedural obligation to provide some form of effective official investigation exists also when an individual has gone missing in life-threatening circumstances and is not confined to cases where it is apparent that the disappearance was caused by an agent of the State (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 59 above, at § 136,ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
4. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310, see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210, ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).
5. Setting out the standards of an effective investigation, the Court has stated that besides being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition and affording a sufficient element of public scrutiny of the investigation or its results, the investigation must also be effective in the sense that it is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC], *Varnava and Others v.* Turkey, cited in § 59 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312, and ECtHR, *Isayeva v. Russia*, cited above, at § 212).
6. In particular, the investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 82, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigative work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see ECtHR [GC], *El-Masri v. “the former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 83 above, at § 322).
7. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards* *v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 83 above, at § 323).
8. 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 § 85 above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 59 above, § 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 probable killing, 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, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 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, § 64).
9. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 84 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 84 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, ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 83 above, at § 324).
10. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR, *El-Masri v. “the former Yugoslav Republic of Macedonia”*, cited in § 86 above, § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also HRC,  *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, *Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives*, UN Document A/HRC/22/52, 1 March 2013, § 23-26).
11. *Applicability of Article 2 to the Kosovo context*
12. The Panel is conscious that the abduction and killing of Mr Zoran Marković occurred shortly after the deployment of UNMIK in Kosovo, when crime, violence and insecurity were rife.
13. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK’s deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
14. The Panel considers that this raises two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, second, whether such standards shall be considered fully applicable to UNMIK.
15. As regards the applicability of Article 2 to UNMIK, the Panel recalls that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under certain international human rights instruments, including the ECHR. In this respect, the Panel has already found that it is true that UNMIK’s interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK’s mandate (see HRAP, *Milogorić* *and Others,* nos. 38/08 and others, opinion of 24 March 2011, § 44; *Berisha and Others,* nos. 27/08 and others, opinion of 23 February 2011,§ 25; *Lalić and Others*, nos. 09/08 and others, opinion of 9 June 2012, § 22).
16. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court of Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 85 above, and ECtHR, *Jularić v. Croatia*, no. 20106/06, judgment of 20 January 2011). The Court has further held that that the procedural obligation under Article 2 continues to apply in “difficult security conditions, including in a context of armed conflict” (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited in § 89 above, at § 164; see also ECtHR, *Güleç v. Turkey*, judgment of 27 July 1998, § 81, Reports 1998-IV; ECtHR, *Ergi v. Turkey*, judgment of 28 July 1998, §§ 79 and 82, Reports 1998-IV; ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 84 above, at §§ 85-90, 309-320 and 326-330;ECtHR, *Isayeva v. Russia*, cited in § 84 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
17. The Court has acknowledged that “where the death to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and […] concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at §164;ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 82 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, at §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
18. Similarly, the HRC has held that the right to life, including its procedural guarantees, shall be considered as the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (see HRC, General Comment No. 6, cited in § 81 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russi*a*n Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
19. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 18 above).
20. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel therefore determines that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
21. Lastly, in response to the SRSG’s objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 85 above, at § 70; ECtHR, *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
22. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel’s jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight and failure to provide family members with minimum necessary information on the status of the investigation (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 88 above, § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK’s failures, which persisted throughout the period of the Panel’s jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.
23. *Compliance with Article 2 in the present case*
24. Turning to the circumstances of the present case, the Panel recalls that Mr Zoran Marković was abducted on 11 July 1999. Based upon the information in the file, UNMIK became aware of the kidnapping by 19 November 1999 at the latest (see § 30 above).
25. The Panel notes that there were obvious shortcomings in the conduct of the investigation from its commencement. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 59 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 84 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see § 21 above).

1. The purpose of this investigation was to discover the truth about the circumstances of Mr Zoran Marković’s abduction and killing, to find the perpetrators and bring them before a competent court established by law. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve all necessary evidence leading to identification of the perpetrator(s).
2. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim’s family. The investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation’s effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 85 - 86 above).
3. The Panel recalls that some significant documentation with respect to the file was delivered to the Panel from the United Nations in New York which was not included with the documentation forwarded from EULEX (see § 47 above). The Panel assumes that UNMIK cannot guarantee whether the file presented to the Panel is complete or not. In case it is not complete, it would indicate that one of the following situations may have occurred: no proper investigation was carried out; the file was not accurately and fully handed over to EULEX; or UNMIK failed to retrieve the complete file from the current custodian. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the complete investigative file for its review (see § 79 above). However, the Panel considers that whichever of these potential explanations is applicable, it would indicate a failure directly attributable to UNMIK, either when it was exercising its executive functions or in its current capacity.
4. The Panel notes in this regard that according to the 2000 Annual Report of UNMIK Police, the complete executive policing powers in the Prishtinë/Priština region, including criminal investigations, were handed over from KFOR to UNMIK Police in September 1999. Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority assuming responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
5. With regard to the first part of the procedural obligation, that is, discovering the whereabouts or determining the fate of Mr Zoran Marković, the Panel notes that, as established above, his mortal remains were discovered on 6 March 2007 (see § 44 above), although the file does not indicate how, where and by which institution they were found. UNMIK identified the mortal remains of Mr Zoran Marković through a comparison of ante-mortem and post-mortem information as well as through DNA analysis conducted by the ICMP in April 2009 (see § 43 above) and handed them over to his family on 5 March 2010.
6. The Panel has already stated on a number of occasions that location and identification of the mortal remains of a missing person is in itself an important achievement. Nevertheless, the Panel has also stressed that the procedural obligation under Article 2 did not come to an end with the discovery of the mortal remains of Mr Zoran Marković, especially as he was reported abducted and the remains showed signs of a violent death (see e.g. HRAP, *Grujić*, no. 287/09, opinion of 19 March 2015, § 96).
7. Now the Panel will turn to the investigation carried out by UNMIK Police with the aim of identifying the perpetrator(s) and bringing them to justice, that is, the second element of the procedural obligation under Article 2 of the ECHR.
8. The Panel notes that already by the end of 1999, UNMIK Police possessed some relevant information on the circumstances surrounding the abduction of Mr Zoran Marković: they knew that the complainant had eye-witnessed the abduction from his balcony and seen four men taking him away in a vehicle, for which a full description, including part of the registration number, had been given to the investigators. However, there is no indication in the file that the UNMIK Police contacted, or made any effort to contact the complainant in the aftermath of the incident in order to interview him, including about the identity of the perpetrators. Likewise, the investigative file shows that no basic investigative steps were taken at this stage such as, initiating a search for the vehicle in which Mr Zoran Marković was abducted, or “canvassing” the area of the alleged crime scene to look for additional potential witnesses.
9. The investigative file shows that the only investigative steps taken by the investigators in the five years after the abduction were, in addition to the registration of the case, contacting UNMIK regional investigation units in February 2001 and recording the ante-mortem information transmitted by the ICRC in February 2002. According to the file, only in May 2004, the WCIU contacts the complainant by telephone (see § 36 above). However, since no witness statement is included in the file, it is not possible to know whether the complainant was questioned on key information concerning the circumstances of his brother’s abduction, such as the possible identity of perpetrators. It appears that, after this contact with the complainant, the file concerning Mr Zoran Marković was reclassified as “pending”.
10. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after that critical date the failure to conduct the necessary investigative actions, including at the initial stage, persisted. Accordingly, inadequacies existing up until that date were not addressed. Thus, in accordance with the continuing obligation to investigate (see § 92 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
11. As those responsible for the crime had not been located, UNMIK was obligated to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform the victim’s relatives regarding any possible new leads of enquiry.
12. The Panel notes that, in March 2007, the mortal remains later identified as those of Mr Zoran Marković were discovered, albeit in unexplained circumstances and that an autopsy was conducted shortly after establishing the cause of his death. As already noted, there is no information in the file as to whether the area where the mortal remains were found was canvassed or whether the person(s) who found the remains were interviewed.
13. The Panel notes that there is no evidence presented in the file that any further investigative activity aimed at identifying the perpetrators and bringing them to justice was accomplished, or even contemplated. A follow-up review of the file, on 24 October 2007, resulted in the reclassification from “inactive” to the closure of the case (see § 45 above).
14. The Panel recalls the SRSG’s argument that the identification and punishment of those responsible for the abduction of Mr Zoran Marković was not possible due to an “overall dearth of information” surrounding the case (see § 73 above). In this regard, the Panel must note that almost any investigation at its initial stage lacks a significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. Thus, it appears that, instead of actively searching for information and leads, UNMIK Police simply waited for further information to appear by itself. In this situation it may have led to the loss of potential evidence (see e.g. HRAP, *P.S*., no. 48/09, opinion of 31 October 2013, § 107; HRAP, *Stevanović*, no. 289/09, opinion of 14 December 2014, § 111).
15. As the Panel has previously observed, UNMIK Police and DOJ had implemented a policy conserving its limited investigative resources and concentrating only on the investigations “with a strong likelihood of suspect identification” (see HRAP, Bulatović, no. 275/09, opinion of 22 April 2015, § 149). As the Panel also noted, this approach was in contrast to the description of the situation on the ground presented by the UN Secretary-General to the UN Security Council at around the same time and indicated a serious systemic failure (see ibid.). In the Panel’s view, the effect of this policy may have had a serious impact on this particular investigation and, possibly, on many others of a similar nature.
16. One of the most compelling signs of failings in the investigation comes directly from criticisms within the UNMIK DOJ itself. The Chief of the Criminal Division directly referred to a number of cases submitted to it by the WCIU, including that of Mr Zoran Marković, and put on record in March 2008, saying “I wish to express my surprise at receiving these cases after approximately 9 years from the commission of the criminal acts, and without any relevant investigative action having been taken by the police. In any event these cases require thorough police investigation.” (See § 48 above).
17. These failings are confirmed by the Chief of the WCIU in his response to the DOJ: “I am also concerned about the lack of progress in war crimes cases but I understand that many of these problems are the result of inadequate reporting systems and standards in the mission at the time.…[I]n December 2002 all of the war crimes cases were reviewed by representatives of DOJ and CCIU investigators…The target was to reduce the number of active investigations to twenty cases….at the end of the review that number was increased to forty” (see § 50 above).
18. He provides an additional explanation to the DOJ in the same memo, where he states “As you correctly pointed out, a number of our cases consist of a database entry, with limited information, and a note that the actual case file is missing. This problem is a result of poor file management and record keeping. We have found that a number of our cases have been handed over to the ICTY and DOJ without proper documentation” (see § 50 above). This mirrors the Panel’s findings in many of its opinions (see HRAP *Janković*, no. 249/09, opinion of 16 October 2014 §§ 33-34, 100, *Stanković*, no. 304/09, opinion of 19 March 2015 § 97, and *Antić-Živković* no. 147/09, opinion of 16 October 2014 §§ 91 - 93, 95; with regard to the DOJ policy not to investigate cases without “strong likelihood of suspect identification”, see also HRAP, *Stevanović*, no. 289/09, opinion of 14 December 2014, § 42; *Bulatović*, no. 275/09, opinion of 22 April 2015, § 149).
19. The Panel notes that the file was not accepted by the DOJ at that time and was ultimately returned to the WCIU, with other similar cases, for further action. However, there is no evidence of any subsequent activity in the file (see § 48 above).
20. The apparent lack of any adequate reaction from UNMIK Police, and of any action at later stages, may have suggested to the 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 lead to a worsening of the situation. The problems that UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
21. As mentioned above, the file indicates that a public prosecutor was informed of this case only in 2008. As the Panel has pointed out previously, a proper prosecutorial review of the investigative file might have resulted in additional recommendations, so that the case would not have remained inactive for years to come (see HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 160). Thus, in the Panel’s view, the review of the investigative files was far from being adequate.
22. The Panel is also aware that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, such an investigation must be undertaken in a serious manner and not be a mere formality. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards identifying the perpetrators and bringing them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 87 above), as required by Article 2 of the ECHR.
23. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victims’ next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests. The investigative file shows that the only contact between UNMIK investigators and Mr Zoran Marković’s family members with respect to the investigation of the perpetrators was a telephone call placed by WCIU investigators to the complainant detailed in the Anti Mortem Investigation Report completed in 2004 (see § 36 above). No further contact is documented in the file, including informing the complainant and his family about the status of the investigation. Indeed, a copy of the criminal complaint from the complainant to the Prishtinë/Priština DPPO included in the file shows the complainant’s frustration over the progress of the investigation when he states that it was “completely inaccessible” (see § 38 above). The Panel therefore considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR (see, *a contrario*,  ECtHR [GC], *Mustafa Tunç and Fecire Tunç v. Turkey*, no. 24014/05, judgment of 14 April 2015, §§ 210 - 216).
24. In light of the shortcomings and deficiencies in the investigation described above, the Panel considers that the case of Mr Zoran Marković, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo (see § 101 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 97 above, at § 11.4, and ECtHR, *Aslakhanova and Others v. Russia*, cited in § 88 above § 123; HRAP, *Bulatović*, cited in § 78 above, at §§ 85 and 101).
25. Therefore, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and killing of Mr Zoran Marković. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
26. **Alleged violation of Article 3 of the ECHR**
27. The Panel considers that the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment arising out of the abduction and killing of his brother, as guaranteed by Article 3 of the ECHR.
28. **The scope of the Panel’s review**
29. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 54 - 58 above).
30. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, “the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 96 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 85 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41). “It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct” (see, among others, ECtHR, *Er and Others v. Turkey*, no. 23016/04, judgment of 31 July 2012, § 94).
31. Lastly, where mental suffering caused by the authorities’ reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, §§ 147 - 148).
32. **The Parties’ submissions**
33. The complainant alleges that the lack of information and certainty surrounding the abduction and killing of Mr Zoran Marković, particularly because of UNMIK’s failure to properly investigate his disappearance caused mental suffering to him and his family.
34. Commenting on this part of the complaint, the SRSG rejects the allegations. The SRSG further argues that no allegations have been made by the complainant “of any action by UNMIK that would have evidenced any disregard for the seriousness of the matter or the emotions of the complainant emanating from the continued missing status of his brother.”
35. The SRSG does not dispute the mental anguish and suffering of the complainant; however he argues that this is not attributable to UNMIK as it is rather “a result of the inherent suffering that results from the killing and disappearance of a close family member. And the unfortunate fact that to date, despite efforts, the authorities have been unable to determine the perpetrators of the abductions.” He states that, in this sense, the European Court has held that the suffering family members must have a “character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation.”

1. The SRSG therefore argues that there has been no violation of Article 3.
2. **The Panel’s assessment**
3. *General principles concerning the obligation under Article 3*
4. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (see ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
5. Setting out the general principles applicable to situations where violations of the obligation under Article 3 of the ECHR are alleged, the Panel notes that the phenomenon of disappearance constitutes a complex form of human rights violation that must be understood and confronted in an integral fashion (see IACtHR, *Velásquez-Rodríguez v. Honduras*, cited in § 81 above, at § 150).
6. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died.
7. The HRC has also recognised disappearances as a serious violation of human rights. In its decision of 21 July 1983, in the case *Quinteros v. Urugay*, it stated that disappearances constitute serious violations of the rights of the disappeared person’s relatives, who suffer from deep anguish which persists for as long as the uncertainty concerning the fate of their loved one continues, often for many years (see HRC, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990), § 14). Moreover, in its decision of 15 July 1994 in the case *Mojica v. Dominican Republic*, the HRC has deemed that “the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 [of the Covenant]”, also prohibiting torture, inhumane or degrading treatment and punishment (see HRC, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).
8. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (ECtHR, *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Er and Others v. Turkey*, cited in § 130 above, at § 94).
9. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey,* cited above, § 96; ECtHR, *Osmanoğlu v. Turkey,* no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (see ECtHR, *Salakhov and Islyamova v. Ukraine,* no. 28005/08, judgment of 14 March 2013, § 201).
10. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya,* Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v Algeria,* views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007) (*Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the case *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (…), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have led to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Amirov*, cited in § 97 above, at § 11.7).
11. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts; on the contrary, in the Court’s view, an assessment of the way in which the authorities of the respondent State reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v. Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
12. In this respect, it is the position of the European Court that findings under the procedural limb of Article 2 would also be of direct relevance in considering the existence of a violation of Article 3 (see ECtHR, *Basayeva and Others v. Russia*, cited in § 141 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 131 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 96 above, at § 140).
13. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117 - 118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107 - 110). However, in contrast, in the case under the Panel’s consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant’s mental distress caused by the commission of the crime itself.
14. The Panel is mindful that in the absence of a finding of State responsibility for the disappearance, the European Court has ruled that it is not persuaded that the authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity, which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among others, ECtHR, *Tovsultanova v. Russia*, no. 26974/06, judgment of 17 June 2010, § 104; ECtHR, *Shafiyeva v. Russia*, no. 49379/09, judgment of 3 May 2012, § 103).
15. *Applicability of Article 3 to the Kosovo context*
16. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 91 - 101 above).
17. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 18 above).
18. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaint before it, considering the particular circumstances of the case.
19. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.
20. *Compliance with Article 3 in the present case*
21. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 3 of the ECHR.
22. The Panel notes the proximity of the family ties between the complainant and Mr Zoran Marković, as the latter is the complainant’s brother. Accordingly, the Panel has no doubt that he indeed has suffered serious emotional distress since Mr Zoran Marković’s abduction occurred before his very eyes, in July 1999.
23. The Panel recalls the failure established above in relation to the procedural obligation under Article 2, despite the fact that UNMIK Police had the minimum necessary information to pursue investigation from the outset. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety.
24. As was shown above with regard to Article 2, no proper investigation was conducted in this case. There has been no evidence presented in the file concerning contact between the complainant’s family and UNMIK authorities with the exception of with respect to the identification and handover of the mortal remains and one telephone conversation with the complainant regarding the investigation, apparently held in 2004 (see § 36 above). The complainant even reported his frustration with the investigation being inaccessible in his complaint to the public prosecutor to no avail (see § 38 above).
25. In view of the above, the Panel concludes that the complainant has suffered severe distress and anguish for a prolonged period of time on account of the way the authorities of UNMIK have dealt with the case and as a result of their inability during that time to find out what happened to his brother. In this respect, it is obvious that, in any situation, the pain of a brother who has to live in uncertainty about the fate of his brother must be unbearable.
26. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the complainant’s distress and mental suffering in violation of Article 3 of the ECHR.
27. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
28. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
29. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate the abduction and killing of Mr Zoran Marković, and that its failure to do so constitutes a further serious violation of the rights of the victim and his next-of-kin, in particular the right to have the truth of the matter determined.
30. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s mission, made compliance with UNMIK’s human rights obligations difficult to achieve.
31. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 20 above), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
32. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

**With respect to the complainant and the case the Panel considers appropriate that UNMIK:**

* + - In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, cited in § 137 above, at § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and killing of Mr Zoran Marković will be established and that the possible perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
    - Publicly acknowledges, including through media, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the abduction and killing of Mr Zoran Marković, as well as the distress and mental suffering subsequently incurred by the complainant, and makes a public apology to him and his family in this regard;
    - Takes appropriate steps towards payment of adequate compensation to the complainant for the moral damage suffered due to UNMIK’s failure to conduct an effective investigation as well as for distress and mental suffering incurred by him as a consequence of UNMIK’s behaviour.

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

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

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, IN RELATION TO THE ABDUCTION AND KILLING OF MR ZORAN MARKOVIĆ;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND KILLING OF MR ZORAN MARKOVIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH MEDIA, RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND KILLING OF MR ZORAN MARKOVIĆ, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED BY THE COMPLAINANT, AND MAKES A PUBLIC APOLOGY TO HIM AND HIS FAMILY;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR.**
7. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
8. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
9. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov Marek Nowicki

Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCPR** International Covenant on Civil and Political Rights

**CPT**  Center for Peace and Tolerance

**DOJ**  Department of Justice

**DPPO** District Public Prosecutor’s Office

**ECHR** European Convention on Human Rights

**ECtHR** European Court of Human Rights

**EU** European Union

**EULEX** European Union Rule of Law Mission in Kosovo

**FRY**  Federal Republic of Yugoslavia

**HLC** Humanitarian Law Centre

**HRAP**  Human Rights Advisory Panel

**HRC** United Nation Human Rights Committee

**IACtHR** Inter-American Court of Human Rights

**ICMP** International Commission of Missing Persons

**ICRC** International Committee of the Red Cross

**ICTY**  International Criminal Tribunal for former Yugoslavia

**IP** International Prosecutor

**JAG** Judge Advocate General's Corps

**KFOR** International Security Force (commonly known as Kosovo Force)

**KLA** Kosovo Liberation Army

**MPU**  Missing Persons Unit

**NATO** North Atlantic Treaty Organization

**OMPF** Office on Missing Persons and Forensics

**OSCE** Organization for Security and Cooperation in Europe

**RIU** Regional Investigation Unit

**SRSG** Special Representative of the Secretary-General

**UN** United Nations

**UNHCR**  United Nations High Commissioner for Refugees

**UNMIK** United Nations Interim Administration Mission in Kosovo

**VRIC** Victim Recovery and Identification Commission

**WCIU**  War Crimes Investigation Unit

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
2. The references drawn upon by the Panel in setting out this general background include: OSCE, “As Seen, as Told”, Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, “Abductions and Disappearances of non-Albanians in Kosovo” (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos. 71412/01 and 78166/01, decision of 2 May 2007; International Commission on Missing Persons, “The Situation in Kosovo: a Stock Taking” (2010); data issued by the United Nations High Commissioner for Refugees, (available at [www.unhchr.org](http://www.unhchr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>). [↑](#footnote-ref-2)
3. The OMPF database is not open to public. The Panel accessed it with regard to this case on 3 August 2015. [↑](#footnote-ref-3)