

**OPINION**

**Date of adoption: 13 March 2014**

**Case No. 127/09**

**Milko MILENKOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 13 March2014,

with the following members taking part:

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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 30 April 2009 and registered on the same day.
3. On 11 December 2009, the Panel requested additional information from the complainant.
4. On 18 December 2009, the Panel requested from the European Union Rule of Law Mission in Kosovo (EULEX) information with regard to 43 complaints in relation to missing persons filed before the Panel, including the complaint of Mr Milko Milenković.
5. On 21 December 2009, the complainant responded to the Panel’s request of 11 December 2009.
6. On 23 March 2010, EULEX provided a response to the Panel’s request of 18 December 2009.
7. On 29 April 2010, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on its admissibility.
8. On 12 July 2010, the SRSG provided UNMIK’s comments with regard to admissibility and the merits of the complaint.
9. On 31 August 2010, the Panel forwarded UNMIK’s response to the complainant, for comments. The complainant did not reply.
10. On 21 October 2010, the Panel declared the complaint admissible.
11. On 27 October 2010, the Panel forwarded its decision to the SRSG, requesting UNMIK’s comments on the merits of the complaint.
12. On 2 November 2010, the SRSG informed the Panel that UNMIK has no additional comments on the merits of the complaint, further to those provided with its response of 12 July 2010.
13. On 18 August 2011, the Panel requested the SRSG to present copies of the files relied upon by UNMIK in preparation of its comments.
14. On 6 September 2011, UNMIK presented to the Panel the copies of the investigative files relevant to the case.
15. On 21 February 2014, the Panel requested UNMIK to confirm whether the disclosure of files concerning the case could be considered final. On the same day, UNMIK provided its response.
16. **THE FACTS**
17. **General background[[2]](#footnote-2)**
18. The events at issue took place in the territory of Kosovo during the conflict and after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
19. 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.
20. 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.
21. 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.
22. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbs, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
23. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
24. 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.
25. 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.
26. 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”.
27. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding 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.
28. 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.
29. On the same date, UNMIK and EULEX signed a Memorandum of Understanding 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.
30. **Circumstances surrounding the disappearance of Mr Stanko Milenković**
31. The complainant states that his son, Mr Stanko Milenković, was a border guard in the Yugoslav Army, stationed in Gjakovë/Ðakovica from beginning in December 1998. The last time the complainant spoke to his son was during a telephone call on 13 April 1999. Despite inquiries with the armed forces of Yugoslavia and later those of Serbia, the complainant has not seen or heard from Mr Stanko Milenković since that time.
32. The complainant indicates that he reported his son’s disappearance to the Serbian Ministry of Internal Affairs, the ICRC and the Yugoslav Red Cross, the Coordination Centre for Kosovo and Metohija of the Government of Serbia, the International Criminal Tribunal for the former Yugoslavia (ICTY), and other organisations.
33. The ICRC opened a tracing request for Mr Stanko Milenković on 22 September 1999; it remains open until now[[3]](#footnote-3). His name is also in the list of missing persons that was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF[[4]](#footnote-4). The entry in relation to Mr Stanko Milenković in the online database maintained by the ICMP[[5]](#footnote-5) reads in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.
34. **The investigation**
35. In the present case, the Panel received from UNMIK only very limited documents previously held by UNMIK Police MPU. In his response of 12 July 2010, the SRSG noted that the information in relation to this case, which UNMIK relied upon, may be incomplete. Nevertheless, on 21 February 2014, UNMIK confirmed to the Panel that no more relevant documents have been obtained.
36. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made them available 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.

1. The file contains a copy of a certificate issued in Niš, Serbia proper, on 25 August 1999, and signed by colonel M.Dj. It states that “… Mr Stanko Milenković had been in the military service at VP 1936/3 Djakovica, from 14 March 1999 until 13 April 1999, when he deserted the unit, which was located near village Kijevo.”
2. An undated printout from a database, in Serbian, states that Mr Stanko Milenković “…was serving his mandatory term in the military, being recruited in December 1998. The soldier Stanko Milenković went missing during the withdrawal of the Serbian army and police from Kosovo and Metohija, on the road Djakovica – Brezovica.” A photograph of Mr Stanko Milenković is attached to this document.
3. A Missing Persons Form of UNMIK Police MPU puts forward brief personal information about Mr Stanko Milenković; it has 13 April 1999 as date of the disappearance and 7 November 2000 as date of report.
4. An MPU Case Continuation Report on the case no. 2000-001633 has two handwritten entries. The first one, dated 7 November 2000, reads: “Input DB OK. Last contact with MP (missing person) was on 22.03.1999. MP was in the army and the only person who can give us more information about him and that case is his friend from army D.K. [address, telephone]. The family got an information from colonel M.Dj. VP: 1936/3 V Niš, that MP deserted from army on 13 April 1999, but they doubt. They got an information from colonel K., who works in Headquarters in Belgrade that their son served the army to the end and then he went home.” The second entry, dated 15 July 2001, reads Input DIV DB OK. Another photograph of Mr Stanko Milenković is attached to this document.
5. The file contains a handwritten statement of the complainant, given at the UNMIK Police station in Shtërpcë/Štrpce on 11 January 2001. Besides providing a brief description of what was known to him about his son’s disappearance, the complainant stated that on 10 January 2001 he heard on radio “Free Europe” that “kidnapped Serbs” were being held in the “AMSJ” building in Prishtinё/Priština. He asked the police to verify if his son was one of those being kept in that building.
6. By a memorandum, also dated 11 January 2001, the above statement of the complainant was forwarded to UNMIK Police Regional Press Officer, with a request to verify whether there was a story about “a jail in the building of the TMK”, in which “shall be kept kidnapped Serbian soldiers”. The Press Officer was asked to inform the Shtërpcë/Štrpce police station of the results, because the complainant “appears several times in our station to know what is new.” No reply to this memorandum is in the file.
7. A message from UNMIK Police Gjilan/Gnjilane Regional Investigation Unit to the MPU, dated 27 January 2001, reads that “[a] check has been made for the following missing persons in the Gnjilane region with negative results: […] Milenkoviq Stanko.”
8. The file further contains an INTERPOL Disaster Victim Identification Form for Mr Stanko Milenković, apparently completed by UNMIK Police on 13 July 2001, referenced to an MPU case no. 2000-001633. The INTERPOL Missing Persons online database, however, does not have information on Mr Stanko Milenković[[6]](#footnote-6). Besides his personal details and ante-mortem description, the form provides the name, address and telephone number of his father (the complainant) and sister, Ms S.M.

1. An MPU Ante-Mortem Investigation Report on the case no. 2000-001633 in relation to the disappearance of Mr Stanko Milenković also bears the number 0531/INV/05. This report was initiated on 13 June 2005 and completed on 16 June 2005. The field “Witness” on the front page has contact details (addresses and telephone numbers) of the complainant and Mr D.K., a friend of the complainant’s son.
2. This report’s fields “Nature of Information” and “Background of the Case” and provides the following identical information: “Stanko MILENKOVIC is a missing person [MP] since 22/03/1999. He was a resident of Sevce village, Strpce District. According to the file he was serving as a soldier of Yugoslavian Army at the Military Camp 1936/3 located in Kijevo village, Djakovica Municipality from 14/03/1999. MP was in the army and the only person who can give us more information about the case is the MP’s friend from army named D.K. […]. The family got information from colonel M.Dj. … that MP deserted from army on 13 April 1999, but they have doubts about that. They got information from colonel K., who presently works in headquarters in Belgrade that their son served the army to the end and he was sent back home. There is no available information about the fate of Stanko MILENKOVIC. The case was reported to ICRC BELGRADE under number BLG-802979-01 and MPU file was open 17/07/2000.”
3. The field “Further Investigation” of this report reads: “We met MP father named Mirko MILENKOVIC, but he did not give us any updated information. He also stated that he had already given [his] blood samples to ICMPF for possible DNA comparison. We tried to contact a MP’s friend named D.K., but phone numbers given in the file were wrong. We also did not find any relative information at available databases and Internet resources.
4. The report’s field “Witness Interviewed” reads “None”. At the conclusion of this report, the investigator wrote: “There is no information leading to a possible MP’s location. This case should remain open inactive within the WCU.” The status of the case is put as “inactive”.
5. The file also contains a document named Investigation Details for Investigation Number: 0531/INV/05, related to the disappearance of Mr Stanko Milenković; it was created on 16 June 2005 and it is cross-linked to the case no. 2000-001633. The field “Request Summary” reads: “There lack of information. MPU file # 2000-001633”. In the field “Invest. Notes” it states: “Refer to the Investigator’s Report and the MPU file. There is none updated information leading to the MP’s location. This case should be kept inactive.” This report’s field “Results” reads “Pending.”
6. A document named “MPU Report”, also dated 16 June 2005, contains brief identification details of Mr Stanko Milenković and a summary of the same case information stated in the MPU Ante-Mortem Investigation Report above (see § 41).
7. The file presented by UNMIK further contains a number of documents from another investigation conducted by UNMIK Police in relation to the alleged abduction by the KLA of five other Kosovo Serbs, which took place on 29 October 1999 in Gjakovё/Đakovica.
8. **EULEX clarification**
9. As mentioned above (§ 3), on 18 December 2009 the Panel requested EULEX to provide additional information in relation to 43 complaints before the Panel. In a response (see § 5 above), dated 23 March 2010, EULEX explained that they had searched the available sources, including the list of cases “found in July 2009 in the PTC building Archive room (not officially handed over from UNMIK to EULEX because no more “active” but dismissed, terminated or closed).”
10. In the same response, EULEX added that the search was not exhaustive, as the available sources did not provide information on the following:
	* + cases, criminal reports or information that UNMIK Police never transferred to UNMIK prosecutors, or otherwise never reached UNMIK prosecutors;
		+ cases which were handled by UNMIK Police and were then transferred to local police or prosecutors, without reporting to UNMIK or EULEX prosecutors;
		+ many cases which were handled by UNMIK prosecutors prior to creation of a centralised case registry by UNMIK DOJ, in 2003.
11. However, the search in the EULEX files provided information on only two cases listed in the Panel’s request of 18 December 2009. No files or other information in relation to the other 41 cases, including the complaint of Mr Milko Milenković, was found. EULEX were not able to confirm if the cases for which the files were not found “were ever investigated by UNMIK Police and/or Prosecutors.”
12. **THE COMPLAINT**
13. The complainant complains about UNMIK’s alleged failure to properly investigate the disappearance of his son. 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).
14. 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.
15. **THE LAW**
16. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**

1. In determining whether it considers that there has been a violation of Article 2 (procedural limb) of the ECHR, the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.

1. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
2. 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.
3. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainant complains about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
4. 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 § 54). 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.
5. 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**
6. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the disappearance of his son. The complainant also states that he was not informed as to whether an investigation was conducted at all, and what the outcome was.
7. In his comments on the merits of the complaint under Article 2, the SRSG does not deny UNMIK’s responsibility to conduct an investigation in the case of Mr Stanko Milenković under Article 2 of the ECHR, procedural part, once the case was reported to the authorities. However, the SRSG notes that the accounts concerning the circumstances of his disappearance are contradictory, one stating that Mr Milenković deserted from the Yugoslav Army on 13 April 1999 while another indicating that he was discharged and sent home at the end of his service.
8. Further, referring to the European Court’s jurisprudence (e.g. cases *Osman v. United Kingdom, Dodov v. Bulgaria, Albekov v. Russian Federation*), the SRSG stresses that the positive obligation to investigate “is not one of result, but of means”, and that it “must not be interpreted in such a way that would impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties of policing in modern societies and the difficult operational choices in terms of priorities and resources, even more so in post-conflict society under UN interim administration like Kosovo.” Thus, according to the SRSG, the investigation “must be assessed on the basis of all alleged relevant facts and with regard to the practical realities of investigation work.”
9. The SRSG continues that special circumstances negatively affecting UNMIK’s ability to investigate crimes, in particular in the initial phase of its mission, must be taken into account. Among these, the SRSG names the following: slow deployment of the international police force; lack of manpower; the generally high crime rate in the immediate aftermath of the NATO bombing; mass resettlement of Kosovo Serbs to Serbia proper, prompted by numerous crimes, especially inter-ethnic violent crimes such as killings, abductions and forced expulsions from houses; and lack of control over the recruitment and selection of international police officers and their mandatory regular rotation according to the UN rules. According to the SRSG, as the UN does not have a standing police force, “… it is required to form a new force every time it is asked to fulfil police duties in its missions. For this reason, UNMIK police investigations cannot be compared to a Member State’s police investigations.” According to the SRSG, “[i]n summary, the standards set by ECHR for an effective investigation cannot be the same for UNMIK as for a State with a functioning, well-organized police apparatus in place and with police officers it can recruit, select and train.”

1. With regard to this particular case, the SRSG asserts that efforts were made by UNMIK Police to investigate the disappearance of the complainant’s son. The SRSG acknowledges that the MPU of UNMIK Police became aware of his disappearance on or before 17 July 2000. According to the SRSG, the lack of results in this respect appears to be attributable to the timing of his disappearance, which was two month before the adoption of the UN Security Council Resolution 1244 (1999) and before UNMIK Police was deployed in Kosovo, which by itself “might constitute a reasonable justification as to why UNMIK Police was not able to trace any witnesses or identify any persons that might have been engaged in this incident, including any possible perpetrators.”
2. The SRSG continues that the circumstances surrounding the alleged abduction of Mr Stanko Milenković remain very vague, as the complainant was not able to provide any substantive information regarding the disappearance of his son and there were no witnesses that could assist in the identification of the perpetrators.
3. The SRSG concludes that this case “is one of those unfortunate cases where no leads were available to UNMIK Police investigators about the exact circumstances of the abduction and perpetrators, which made it impossible for UNMIK Police to proceed with the investigation of the case. As a consequence … such cases were often considered low priority and were only re-opened once further information became available… This approach was dictated by the difficult operational choices in terms of priorities and limited policing recourses that UNMIK had [...].”
4. Nevertheless, in the SRSG’s opinion, “based on the standards to be applied to UNMIK’s policing and investigation responsibilities, there can be no doubt that UNMIK’s investigation did comply with the requirements of an effective investigation.” Thus, according to the SRSG, there has been no violation of Article 2 of the ECHR.
	1. **The Panel’s assessment**
5. 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 Police did not conduct an effective investigation into Mr Stanko Milenković’s disappearance.
6. *Submission of relevant files*
7. At Panel’s request, on 6 September 2011, the SRSG provided copies of the limited documents related to this investigation. However, in its earlier submission of 12 July 2010, the SRSG noted that, as UNMIK is dependent upon EULEX to provide information on any matter before the HRAP, the file may be incomplete. Nevertheless, on 21 February 2014, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 14 above).
8. As mentioned above (§§ 3 and 47), the Panel had also requested EULEX to provide additional information in relation to this case, but EULEX was unable to do so (see § 49 above).
9. 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).
10. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2.
11. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative documents. However, UNMIK has not provided any explanation as to which parts of the documentation may be incomplete.
12. 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).
13. *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 positive obligation has also 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 Article 2(3) (right to an effective remedy) of the ICCPR (see HRC, General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.
2. In order to address the complainant’s allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 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 § 57 above, at § 136).
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).
5. Setting out the standards of an effective investigation, the Court has stated that “beside being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC]*, Varnava and Others v. Turkey*, cited in § 57 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, § 312; and *Isayeva v. Russia*, cited above, § 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 investigation’s ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 74 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazărev. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
7. Even with regard to persons disappeared and later found dead, which is not the situation in the present case, 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 § 77 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 57 above, at § 148, *Aslakhanova and Others v. Russia*, nos. 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation “does not come to an end even on discovery of the body .... This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 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).
8. 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*, cited in § 76 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 76 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011).
9. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, 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 [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191). The United Nations also recognises 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 UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; see also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 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).
10. *Applicability of Article 2 to the Kosovo context*
11. The Panel is conscious that Mr Stanko Milenković disappeared almost three months before the deployment of UNMIK in Kosovo, during the armed conflict, when crime, violence and insecurity were rife.
12. On his part, the SRSG does not contest that, from its deployment in Kosovo in June 1999, 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.
13. 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.
14. 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).
15. 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 § 77 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 § 80 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 § 76 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 76 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39 - 51).
16. The Court has acknowledged that “where the death [and disappearances] 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, § 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 § 74 above, at §§ 86 ‑ 92; ECtHR, *Ergi v Turkey,* cited above, §§ 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, §§ 215 - 224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158 - 165).
17. Similarly, the HRC has held that the right to life, including its procedural guarantees, shall be considered as the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (see, HRC, General Comment No. 6, cited in § 73 above, at § 1; HRC, *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).
18. 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 § 22 above).
19. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel thus agrees with the SRSG that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
20. 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 § 77 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
21. *Compliance with Article 2 in the present case*
22. Turning to the particulars of this case, the Panel first notes the complainant’s statement that the disappearance of Mr Stanko Milenković was reported to the Serbian Ministry of Internal Affairs, the ICRC and the Yugoslav Red Cross, the Coordination Centre for Kosovo and Metohija of the Government of Serbia, the ICTY, as well as to others (see § 28 above).
23. According to the file in its possession, the Panel considers that certainly by November 2000, UNMIK Police MPU had registered a case in relation to Mr Stanko Milenković’s disappearance (see § 34 above). In addition, in January 2001, the complainant himself approached UNMIK Police and asked for additional actions in relation to his son’s case (see § 36 above). In October 2001, the ICRC, again, informed UNMIK about Mr Stanko Milenković’s disappearance and provided his full ante-mortem details (see §§ 29 and 39 above).
24. The purpose of this investigation was to discover the truth about the events leading to the disappearance of the complainant’s son, to establish his fate and to identify the perpetrators. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
25. 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 §§ 77 - 78 above).
26. The Panel notes that there were obvious shortcomings in the conduct of the investigation from its inception. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 57 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 § 77 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 § 25 above).
27. The Panel notes in this regard that according to the 2000 Annual Report of UNMIK Police, by October 1999 UNMIK Police had full investigative authority in Prizren region and by June 2000 – in Peć/Pejё region. In the Panel’s view, it was UNMIK’s responsibility to ensure, first, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
28. Having noted the SRSG’s assertion that the file submitted to the Panel may be incomplete, and the lack of further explanation in relation to this (see § 67 and 71 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.
29. 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 § 71 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.
30. The Panel notes the especially important fact related to this particular case, which is the response from EULEX to the Panel’s request for information (see §§ 47 - 49 above). In that response, EULEX informed the Panel that in July 2009 a number of cases not officially handed over from UNMIK to EULEX for various reasons were “found” in the former UNMIK DOJ building. In the Panel’s view, it is particularly indicative of a possible general failure to comply with the obligation to ensure the proper handover of the investigative material.
31. With regard to the first part of the procedural obligation, that is establishing the fate of Mr Stanko Milenković, the Panel notes that his whereabouts remain unknown. The Panel notes that ante-mortem information concerning the complainant’s missing son had been gathered on 13 July 2001 and that the ICMP database confirms that the DNA samples had been collected, but it is not clear when, from or by whom (see §§ 29 and 39 above).
32. In this respect, the Panel notes that the collection of DNA samples is of itself an essential action that secures the necessary material for any future comparative examination and possible identification of located mortal remains. However, as in this case no such identification has yet occurred, the Panel will turn to the investigation carried out by UNMIK Police with the aim of identification of perpetrators and bringing them to justice, that is the second element of the procedural obligation under Article 2 of the ECHR.
33. As regards the requirements of promptness and expedition, the Panel is mindful that in any investigation, and particularly in an investigation of a disappearance in life-threatening circumstances, the initial stage is of the utmost importance, and it serves two main purposes: to identify the direction of the investigation and ensure preservation and collection of evidence for future possible court proceedings (compare with the Panel’s position in the case *X*., nos. 326/09 and others, opinion of 6 June 2013, § 81).
34. In this respect the Panel recalls that UNMIK became aware of the disappearance of Mr Stanko Milenkovićby November 2000, when the investigation into the matter was opened by the UNMIK Police MPU (see § 93 above). The Panel also notes that the amount of factual information available to the police in November 2000 (see § 35 above) was no less than that in June 2005, when MPU compiled its Ante-Mortem Investigation Report (see § 41 above). However, no immediate action by UNMIK Police whatsoever, except for probably making an initial assessment of the information, registering the case and entering the information into the database, is reflected in the investigative file. Thus, in the Panel’s view, this investigation obviously failed to fulfill the requirements of promptness and expeditiousness.
35. The Panel notes that the file does not contain an ICRC Victim Identification Form for Mr Stanko Milenković, but instead an INTERPOL Disaster Victim Identification Form, apparently completed by UNMIK Police on 13 July 2001 (see § 39 above). It contains contact information for his father (the complainant) and sister, Ms S.M. Thus, the Panel considers that by October 2001 at the latest, UNMIK Police possessed all the necessary information (see § 93 above). The reasons why the complainant was not contacted by UNMIK Police until June 2005 (see § 41 above) and his statement was never properly recorded, are not clear to the Panel.
36. Likewise, this investigation failed in the requirement to take reasonable investigative steps and to follow the obvious lines of enquiry to obtain evidence. A properly maintained investigative file should have included records of all investigative actions and particularly of the interviews with the complainant, suspects and all potential witnesses to the disappearance. In all cases, such interviews should take place as soon as possible and should be recorded and retained in the case file[[7]](#footnote-7).
37. The Panel notes in this context that the investigative file only reflects the above-mentioned single contact by UNMIK Police with the complainant in order to obtain additional information (see § 42 above). First, in the Panel’s view, such a contact with a potential witness, more than six years after the disappearance of Mr Stanko Milenković and almost five years after the case had been opened, was obviously belated and was not even properly recorded.
38. Second, the Panel notes that the MPU investigator who reviewed the case in June 2005, recorded in his report that he was not able to contact the named witness, Mr D.K., as the “phone numbers given in the file were wrong” (see § 42 above). The report does not explain, however, if there was an attempt to locate the witness at his address in Serbia proper, also available in the file, or if he tried to contact Mr Stanko Milenković’s sister, whose contact data were also available. The Panel has already noted in other similar cases that there were other ways of locating witnesses in Serbia proper, which were available to the police from the inception of this investigation, in particular through the Serbian authorities (see e.g. HRAP, *Knežević*, no. 141-09, opinion of 14 February 2014, § 108).
39. Recalling the fact that, indeed, it remained unclear until now whether Mr Stanko Milenković had disappeared while he was still in military service or subsequently, or whether he deserted from the army or served his term until the end. However, the police never tried to obtain an official clarification from the Serbian Ministry of Defense on that matter. Likewise, the Ministry of Defence could have provided a list of the names and contact details of the fellow soldiers of the complainant’s son, who could at least have provided more details in relation to his disappearance. Likewise, the Panel noted that UNMIK Police does not seem to have properly followed up on information in relation to a potential illegal detention centre in Prishtinё/Priština provided in January 2001 (see §§ 36 - 37 above).
40. In the Panel’s view, all these shortcomings significantly undermine the SRSG’s assertion that at that time “no leads were available to UNMIK Police investigators about the exact circumstances of the abduction and perpetrators (see § 64 above). The Panel likewise recalls that, according to the SRSG, the lack of leads “made it impossible for UNMIK Police to proceed with the investigation of the case” (*ibid.*).
41. 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. The file, as made available to the Panel, does not show any such activity. 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.*, case no. 48/09, opinion of 31 October 2013, § 107).
42. In the Panel’s view, it is because of the lack of information at the initial stage that this case was made “inactive” or “pending”, i.e. without any action by the police (see §§ 43, 44 above). The Panel recalls in this regard its position in relation to the categorisation of cases into “active” and “inactive”, that any “categorisation of an investigation should take place only after the minimum possible investigative actions have been undertaken and obtainable information has been collected and analysed” (see e.g. HRAP, *B.A*., no. 52/09, opinion of 14 February 2013, § 82). In this case, such prioritisation should not have been made at the earliest stages, before the complainant and the available witnesses had been interviewed about the circumstances of the disappearance and all obtainable evidence had been collected.
43. The Panel notes in this context that if not worked upon, developed, corroborated by other evidence and put in a proper form, any information by itself, however good it might be in relation to a crime under investigation, does not solve it. In order to be accepted in court, information must become evidence, which can only happen through investigative actions undertaken in compliance with the applicable rules of criminal procedure. In this case, UNMIK Police appear to have never undertaken any action in this direction (see e.g. HRAP, *Todorovski*, case no. 81/09, opinion of 31 October 2013, § 116).
44. 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 persisted, thus, in accordance with the continuing obligation to investigate (see § 79 above), bringing the assessment of the whole investigation within the period of the Panel’s jurisdiction. However, as the Panel already noted above, that during the period within its jurisdiction, the only substantive action undertaken by UNMIK Police was a telephone conversation with the complainant during a case review, between 13 and 16 June 2005 (see §§ 40-43).
45. In addition, the Panel also considers that, as the mortal remains of Mr Stanko Milenković had not been located and those responsible for the alleged crime had not been identified, UNMIK Police was obliged to use the means at their disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform their relatives regarding the progress of this investigation.
46. The Panel understands from the file, that this investigation was reviewed by UNMIK Police once, in June 2005 (see §§ 40-43 above). After this review, the MPU investigator used the lack of contact with witnesses as a reason to *de facto* close the investigation, while not trying to use other means of contacting those known witnesses (see § 108-109 above).
47. In the Panel’s opinion, there was no adequate and thorough review of this case. Instead, the case review appears to have been undertaken as a mere formality, as police failed to identify obvious gaps in the investigative process and failed to act upon available information, thus carrying over the mistakes made by previous investigator(s). As the Panel has already noted (see § 104), the facts of the case, which the investigator put in his report in 2005, were practically a simple repetition of the facts, which were available to the police from the very beginning.
48. The apparent lack of any **immediate** reaction from UNMIK Police, and of any adequate action at later stages, may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
49. 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 locating the missing persons, identifying the perpetrators and to bring them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 95 above), as required by Article 2.
50. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victim’s next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
51. As was shown above, the investigative file reflects only one contact with the complainant, Mr Stanko Milenković’s father, in June 2005. On the contrary, the complainant had to come to the police himself, when he came across information which he thought might help to shed some light on his son’s fate (see § 36 above). However, although that the complainant came several times to the police “to know what is new”, the police does not seem to have reacted to his requests (see § 37 above). The Panel therefore considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR.
52. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the disappearance of Mr Stanko Milenković. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
53. **Alleged violation of Article 3 of the ECHR**
54. The Panel considers that the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment, guaranteed by Article 3 of the ECHR.
55. **The scope of the Panel’s review**
56. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 52 - 57 above).
57. 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 § 87 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 77 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).
58. 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).
59. **The Parties’ submissions**
60. The complainant alleges that the lack of information and certainty surrounding the disappearance of Mr Stanko Milenković, and particularly the lack of proper investigation by UNMIK, caused mental suffering to himself and his family.
61. With regard to this part of the complaint, the SRSG also presented his comments at the admissibility stage. He stresses that the information provided by the complainant “does not meet the criteria set out by the ECHR”, as it “does not even constitute *prima facie* indication that a violation of Article 3 might have taken.”
62. Moreover, as the investigative file shows that UNMIK did contact the complainant, the SRSG asserts that “there is no evidence that UNMIK, when responding to inquiries of the complainant, acted in a manner which may amount to a violation of Article 3 ECHR.”
63. Therefore, the SRSG requests the Panel to reject this part of the complaint, as there has not been a violation of Article 3 of the ECHR.
64. **The Panel’s assessment**
65. *General principles concerning the obligation under Article 3*
66. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (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.
67. 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 § 73 above, at § 150)
68. 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.
69. 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).
70. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (see ECtHR, *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 § 125 above, at § 94).
71. 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 (ECtHR, *Salakhov and Islyamova v. Ukraine,* no. 28005/08, judgment of 14 March 2013, § 201).
72. 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 lead to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Amirov v. Russian Federation*, cited in § 88 above, at § 11.7).
73. 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).
74. 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 § 135 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 126 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 87 above, at § 140).
75. 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.
76. 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).
77. *Applicability of Article 3 to the Kosovo context*
78. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 82 - 91 above).
79. 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 § 23 above).
80. 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.
81. 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 investigations, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.
82. *Compliance with Article 3 in the present case*
83. 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.
84. First, in relation to the SRSG’s objection as to the lack of a *prima facie* case in the complainant’s submission, the Panel recalls that at the admissibility stage it found that this complaint under Articles 2 and 3 of the ECHR raised serious issues of fact and law, which had to be examined on their merits (see HRAP, *Milenković*, no. 127/09, decision of 21 October 2010, § 14). Therefore, the Panel considers that from the very beginning, the allegations put forward by the complainant were sufficient to justify examination of this case against the substantive standards set forth by Article 3, and therefore rejects the SRSG’s objection.
85. Further, the Panel notes the proximity of the family ties between the complainant and Mr Stanko Milenković, as he is the complainant’s son.
86. 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. The Panel has already noted that despite the complainant’s numerous visits to the UNMIK Police station in Shtërpcë/Štrpce, in January 2001, the police do not seem to have provided him with any information related to his son’s disappearance (see § 121 above). The Panel further notes that UNMIK Police contacted the complainant only once, in 2005, and only to check whether he had received any “updated information” (see § 42 above). 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.
87. As was shown above with regard to Article 2, no investigation, even a bare minimum, was conducted in this case. The complainant was never formally interviewed by either UNMIK Police or prosecutors; only the ante-mortem data and the DNA samples were colledted. Instead of investigating, the police was simply waiting for information to appear by itself.
88. Drawing inferences from UNMIK’s failure to provide a plausible explanation for the absence of any regular contact with the complainant, the Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave uncertainty to the complainant and his family about Mr Stanko Milenković’s fate and the status of the investigation.
89. In view of the above, the Panel concludes that the complainant has suffered severe distress and anguish for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with the case and as a result of his inability to find out what happened to Mr Stanko Milenković. In this respect, it is obvious that, in any situation, the pain of a father who has to live in uncertainty about the fate of his son must be unbearable.
90. 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.
91. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
92. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
93. 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 and prosecute those responsible for the disappearance of Mr Stanko Milenković, 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.
94. 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.
95. 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 § 18), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
96. 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*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC]), *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the diplomatic means available to it *vis-à-vis* EULEX and the Kosovo authorities, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the disappearance of Mr Stanko Milenković will be established and that perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
		- Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the disappearance of Mr Stanko Milenković, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainant 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 the complainant 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;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES EULEX AND OTHER COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE DISAPPEARANCE OF MR STANKO MILENKOVIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE DISAPPEARANCE OF THE COMPLAINANT’S SON, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT AND HIS FAMILY;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION OF THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR.**
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**

**CCIU** - Central Criminal Investigation Unit

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

**DOJ** - Department of Justice

**DPPO** - District Public Prosecutor’s Office

**ECHR** - European Convention on Human Rights

**ECtHR**- European Court of Human Rights

**EU** – European Union

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

**FRY** - Federal Republic of Yugoslavia

**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

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

**KLA** - Kosovo Liberation Army

**MPU** - Missing Persons Unit

**MUP -** Serbian Ministry of Internal Affairs (Serbian: *Министарство унутрашних послова*)

**NATO** - North Atlantic Treaty Organization

**OMPF** - Office on Missing Persons and Forensics

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

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

**UN** - United Nations

**UNHCR** - United Nations High Commissioner for Refugees

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

**VRIC** - Victim Recovery and Identification Commission

**WCIU** - War Crimes Investigation Unit

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 and78166/01, 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 ICRC database is available at: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 7 March 2014). [↑](#footnote-ref-3)
4. The OMPF database is not open to public. The Panel accessed it with regard to this case on 7 March 2014. [↑](#footnote-ref-4)
5. The ICMP database is available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 7 March 2014). [↑](#footnote-ref-5)
6. See at: <http://www.interpol.int/notice/search/missing> (accessed on 7 March 2014). [↑](#footnote-ref-6)
7. See: United Nations Manual On The Effective Prevention And Investigation Of Extra-Legal, Arbitrary And Summary Executions, adopted on 24 May 1989 by the Economic and Social Council, Resolution 1989/65. [↑](#footnote-ref-7)