

**OPINION**

**Date of adoption: 16 October 2014**

**Case No. 249/09**

**Cica JANKOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 16 October 2014,

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 14 April 2009 and registered on 30 April 2009.
3. On 23 December 2009, the Panel requested additional information from the complainant. The complainant responded on 17 March 2010.
4. On 8 September 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on admissibility.
5. On 20 October 2011, the SRSG provided UNMIK’s response.
6. On 16 December 2011, the Panel declared the complaint admissible.
7. On 19 December 2011, the Panel forwarded its decision on admissibility to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
8. On 25 April 2012, the SRSG presented UNMIK’s response in relation to the merits of the complaint, together with the copies of the relevant documents.
9. On 29 September 2014, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the cases could be considered final.
10. On 6 October 2014, UNMIK provided its response.
11. **THE FACTS**
12. **General background[[2]](#footnote-2)**
13. The events at issue took place in the territory of Kosovo after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
14. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a “Military Technical Agreement” by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.
15. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to “promote and protect human rights” in Kosovo in accordance with internationally recognised human rights standards.
16. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
17. Meanwhile, members of the non-Albanian community – mainly but not exclusively 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.
18. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
19. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.
20. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.
21. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being “well-functioning” and “sustainable”.
22. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document reiterating, among other things, its commitment to solving the fate of missing persons from all communities, and recognizing that the exhumation and identification programme is only a part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
23. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with EULEX assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
24. On the same date, UNMIK and EULEX signed a 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.
25. **Circumstances surrounding the disappearance of Mr Marjan Melonaši**
26. The complainant is the mother of Mr Marjan Melonaši, a journalist of the Serbian Language Editorial Service of the Radio and Television of Kosovo (RTK).
27. According to the complainant, on 6 September 2000 at around 14:10, her son left the RTK premises, apparently heading home. Since that time his whereabouts have remained unknown.
28. The complainant indicates that she reported her son’s disappearance to UNMIK, the ICRC, the Yugoslav Red Cross, the Ministry of Internal Affairs of the Republic of Serbia (MUP), but with no results. She also explains that, according to her knowledge, the investigation into her son’s disappearance was registered under a “no. 122 from 10 September 2000”, and that she was never informed as to whether any investigation was actually carried out and what, if any, were its results.
29. The tracing request of the ICRC with regard to Mr Melonaši remains open[[3]](#footnote-3). The entry in relation to him in the online database maintained by the ICMP reads in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”[[4]](#footnote-4). Both online sources have 9 September 2000 recorded as the date of disappearance/last contact.
30. Mr Melonaši’s name is also in the list of missing persons, which 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[[5]](#footnote-5).
31. **The investigation**

*Disclosure of relevant files*

1. In the present case, the Panel received from UNMIK only “copies of some of the documents” in relation to the actions undertaken by the UNMIK OMPF and UNMIK Police. The Panel notes that UNMIK has confirmed that all documents available to it have been provided.
2. Concerning disclosure of the information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that, although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

*OMPF and WCIU investigative files*

1. The earliest document in the investigative file consists of a Victim Identification Form for Mr Marjan Melonaši, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 26 above). Besides his personal details and ante-mortem description, it provides the address where he resided in Prishtinё/Priština and brief details of his disappearance, as well as the name and complete contact details of his mother (the complainant). In the field “Other persons who disappeared with the missing person” on the first page, “yes” is encircled, with the following explanation: “Two journalists – Albanians, whose names not known”. A copy of Mr Melonaši’s passport and two of his photographs are attached to this form.
2. The next document is an English translation of the complainant’s criminal report to the International Prosecutor (IP) at the Prishtinё/Priština District Public Prosecutor’s Office (DPPO), informing the prosecutor about the “brutal kidnapping of Mr Marjan Melonaši” and complaining about the lack of action. A number 2005/00091 is hand-written on top of this document; according to the marking at the bottom, the translation was created on 2 February 2005, by an interpreter from the UNMIK DOJ.
3. Mrs Janković stated in this report that the matter was reported to KFOR on the same day. She also complained that “[i]t has been made completely impossible for the injured party […] to receive information about the measures taken to find the kidnapped person and about the perpetrators of this terrorist act, as well as information on the units and officers who were in charge of maintaining public peace and order and safety of the citizens on the territory of Pristina municipality.” In this report, she proposed that the IP hears “the commanders who were commanding the military units at the time when this criminal act was committed”.
4. The next document in the file is a memorandum, dated 15 November 2005, from the OMPF office in Belgrade to the Head of OMPF; it is in relation to the disappearance of Mr Marjan Melonaši and it is cross-referenced to the UNMIK Police MPU case no. 2000-001109. In the “Background” part of this document, it is added that when Mr Marjan Melonaši was last seen, he was getting into a yellow taxi car in front of RTK building and that his grandfather, Mr K.M., reported his disappearance to the UNMIK Police, also providing identification details for Mr Marjan Melonaši. The location and the contact telephone number for Mr K.M. is also provided in that memorandum. It is also stated that, according to the complainant, on the same day two other RTK employees “were kidnapped and later found dead in Pristina and identified”.
5. The part “Current situation” of the same document states that, based on several requests from the complainant, the status of the file was checked and it “was figured out that the case was closed and the file is empty. UNMIK police also confirmed that the case had been closed but reason for it remained unknown.” The document further states that on 15 November 2005, the complainant visited the OMPF office in Belgrade and “displayed disappointment and incomprehension getting such information.” On that occasion, the complainant also mentioned the name of her son’s girlfriend, Ms S.K., who then worked for UN or KFOR, but “shortly after kidnapping she moved from Kosovo to Belgrade”. She suggested that Ms S.K. should have more information about Mr Melonaši’s friends and colleagues in Kosovo, as well as “circumstances, which preceded kidnapping including possible threats”; full contact details for Ms S.K. in Serbia proper are also in this memorandum.
6. At the end, the “Proposal” part this memorandum reads: “Due to the fact that the file is empty, it is not clear whether or not UNMIK police succeeded to establish contact with grandfather and girlfriend of [Mr Melonaši] so it could be decided case to be reopened for additional investigation. In case that UNMIK police has no more avenues for investigation, the case could remain open in OMPF […] because the parents gave blood for DNA analysis.”

1. The file also contains another, undated, list named “Serbian Claims – Pristina II”, which among a number of entries contains information in relation to the investigation into Mr Melonaši’s disappearance, no. 2005-00091. The “potential” of this case is marked as “low”.
2. A printout from the WCIU database in relation to the case no. 2005-00091, dated 21 October 2007, briefly states the known facts about the disappearance of Mr Marjan Melonaši. The report indicates that this entry was entered in the WCIU database on 13 August 2005.
3. On 20 July 2009, an EULEX IP requested EULEX police to investigate the disappearance of Mr Marjan Melonaši. This request is numbered PPP-096/09 and is cross-referenced to UNMIK Police no. 2005-00091. The disposition of this request states that on 9 September 2000, Mr Melonaši left his work place and “was kidnapped by an armed, unidentified group of Persons, KLA”. The date of initial report is stated as 13 August 2005, it states that the file was initially sent to [UNMIK] DOJ, but the DOJ “sent it back to WCIU”. According to this IP’s analysis, the charges could be war crimes against the civilian population and Kidnapping. The same IP also stated that there were no witnesses and no evidence collected.
4. No more investigative documents are in the file.
5. **THE COMPLAINT**
6. The complainant complains about UNMIK’s alleged failure to properly investigate the disappearance of Mr Marjan Melonaši. 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).
7. The complainants also complain about the mental pain and suffering allegedly caused to herself by this situation. In this regard, she relies on Article 3 of the ECHR.
8. **THE LAW**
9. **Alleged violation of the procedural obligation under Article 2 of the ECHR** 
   1. **The scope of the Panel’s review**
10. In determining whether it considers that there has been a violation of Article 2 (procedural limb) of the ECHR, the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses for the first time the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.
11. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
12. 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.
13. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
14. 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 § 99). 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.
15. 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**
16. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the disappearance of Mr Marjan Melonaši. The complainant also states that she was not informed as to whether an investigation was conducted and what the outcome was.
17. The SRSG generally accepts that Mr Marjan Melonaši disappeared in life threatening circumstances. The SRSG likewise does not dispute UNMIK’s responsibility to conduct an investigation into his disappearance under Article 2 of the ECHR, procedural part, starting from 11 June 1999. In the words of the SRSG, “the essential purpose of such investigation [was] to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”
18. Further, citing the UN Secretary-General’s report to the United Nations Security Council in December 2000, the SRSG notes that in the third quarter of 2000 UNMIK:

“continued to place primary emphasis on combating politically motivated violence. A Political Violence Task Force, staffed jointly by senior staff of UNMIK police and [KFOR] established a Kosovo-wide network of officials to coordinate activities between UNMIK police and KFOR at the local, regional and central level. … Security responses by UNMIK police and KFOR ranged from the provision of military and police patrols to personal protection for high-risk individuals.

The pre-election period saw a significant drop in the level of politically motivated violence. In the post-election period, however, the number of attacks returned to a level comparable to that of mid-summer 2000. … Although the arrest and prosecution of perpetrators of these crimes were a critical priority for UNMIK police, a common theme throughout all these cases remained the reluctance of the local population to step forward and assist in the identification of suspects…”

1. The SRSG underlines that the complainant does not allege a violation of the substantive part of Article 2, but rather of its procedural element. The SRSG states that “the procedural element of Article 2 is essentially two-fold: (i) an obligation to determine through investigation the fate and/or whereabouts of the missing person; and (ii) an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person.”
2. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

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

New institutions had to be created and the existing ones had to be restructured. Some reluctance on the part of the former warring parties to work with those new institutions could be expected in the post-war period, as evidenced in the present case. While it is difficult to pinpoint when exactly this process ended, the Court considers that the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005, following comprehensive vetting of the appointment of police and judiciary and the establishment of the War Crimes Sections within the Court of Bosnia and Herzegovina. All this considered and since there has been no substantial period of inactivity post-2005 on the part of the domestic authorities in the present case, the Court concludes that, in the circumstances obtaining at the material time, the domestic criminal investigation can be considered to have been conducted with reasonable promptness and expedition.”

1. In the view of the SRSG, UNMIK faced a very similar situation in Kosovo “from 1999 to 2008” as the one in Bosnia and Herzegovina from 1995.
2. The SRSG argues that fundamental to conducting effective investigations is a professional, well trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task, which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

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

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

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to crimes. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and culture, with limited support from the still developing Kosovo Police.
2. He further states that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States “with more established institutions and without going through the difficulties associated with a post-conflict situation.”
3. With regard to the complaint of Mrs Janković, the SRSG provides a brief overview of the actions undertaken by UNMIK authorities and the available investigative documents (see §§ 29 - 37 above). He particularly emphasized that Mr Marjan Melonaši was included in the list, dated 11 February 2002, containing the names of 511 missing persons for whom ante-mortem data was collected by the ICRC in Serbia proper. Furthermore, the SRSG emphasizes that from 2005, the complainant’s son was registered by UNMIK as a missing person (victim) and that his case was analysed by the OMPF in November 2005 (see §§ 32 - 34 above). The SRSG likewise mentions the above-mentioned documents reflecting the involvement of the EULEX into this matter, in 2009 (see § 37).
4. Finalizing his submission, the SRSG states that “it is clear the UNMIK made the investigative act possible under the circumstances to locate and identify the remains of Mr. Melonaši. It is also evident from other cases that in the absence of witness or leads, investigations can be stalling.” Thus, according to the SRSG “in the absence of information to the contrary … there is no violation of Article 2 ECHR, which can be attributed to UNMIK.”
   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 ECHR in that UNMIK Police did not conduct an effective investigation into the disappearance of Mr Marjan Melonaši.
6. *Submission of relevant files*
7. The SRSG observes that all available files regarding the investigation have been presented to the Panel, but that those were only “copies of some of the documents”. On 10 October 2014, UNMIK confirmed to the Panel that the disclosure may be considered complete (see § 9 above).
8. 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 complaints. 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).
9. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigation to their handing over, is crucial to the continuation of such investigations and could thus raise *per se* issues under Article 2. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. However, the Panel likewise notes that UNMIK has not provided any further explanation as to whether or not any additional documentation may exist, nor with respect to which parts of the investigation.
10. 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 complaints on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of 15 March 2011, § 146).
11. *General principles concerning the obligation to conduct an effective investigation under Article 2*
12. First, the Panel considers that the limited content of the investigative files raises issues of the burden of proof. In this regard, the Panel refers to the approach of the European Court on Human Rights as well as of the United Nations Human Rights Committee (HRC) on the matter. The general rule is that it is for the party who asserts a proposition of fact to prove it, but that this is not a rigid rule.
13. Following this general rule, at the admissibility stage an applicant must present facts, which are supportive of the allegations of the State’s responsibility, that is, to establish a prima facie case against the authorities (see, mutatis mutandis, *ECtHR, Artico v. Italy*, no. 6694/74, judgment of 13 May 1980, §§ 29-30, Series A no. 37; *ECtHR, Toğcu v. Turkey*, no. 27601/95, judgment of 31 May 2005, § 95). However, the European Court further holds that “... where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities … The burden of proof may then be regarded as resting on the authorities to provide a satisfactory and convincing explanation” (see ECtHR [GC], *Varnava and Others v Turkey*, cited above in § 45, at §§ 183-184).
14. The European Court also states that “... it is for the Government either to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred, failing which an issue under Article 2 and/or Article 3 of the Convention will arise” (see ECtHR, *Akkum and Others v. Turkey*, no. 21894/93, judgment of 24 June 2005, § 211, ECHR 2005-II (extracts)). The Court adds that “… [i]f they [the authorities] then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn” (see ECtHR, *Varnava and Others v Turkey* [GC], cited above, in § 45, at § 184; see also, HRC, *Benaniza v Algeria*, Views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; HRC, *Bashasha v. Libyan Arab Jamahiriya*, Views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008).
15. The Panel understands that the international jurisprudence has developed in a context where the Government in question may be involved in the substantive allegations, which is not the case with UNMIK. The Panel nevertheless considers that since the documentation was under the exclusive control of UNMIK authorities, at least until the handover to EULEX, the principle that “strong inferences” may be drawn from lack of documentation is applicable (see HRAP, *B.A.,* no. 52/09, opinion of 1 February 2013, § 53).
16. Second, the Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights *Velásquez-Rodríguez* (see Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The positive obligation has also been stated by the 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.
17. In order to address the complainants’ allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports 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).
18. 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 § 46 above, at § 136; ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
19. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310; see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210; ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).
20. 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 § 102 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312; and *Isayeva v. Russia*, cited above, at § 212).
21. 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 § 68 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 Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see ECtHR [GC], *El-Masri v. “the Former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 69 above, at § 322).
22. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECHR 2002‑II; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 69 above, at § 323).
23. Specifically with regard to persons disappeared and later found dead, which is not the situation in this 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 § 136 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 above, at § 148, *Aslakhanova and Others v. Russia*, nos 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation “does not come to an end even on discovery of the body .... This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 102 above, at § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 71 above, at § 64).
24. 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 § 70 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 70 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; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 69 above, at § 324).
25. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri*, cited in § 72 above, at § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also HRC,  *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, *Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives*, UN Document A/HRC/22/52, 1 March 2013, § 23-26).
26. *Applicability of Article 2 to the Kosovo context*
27. The Panel is conscious of the fact that the disappearance of Mr Marjan Melonaši took place more than a year after the deployment of UNMIK in Kosovo.
28. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK’s deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
29. The Panel considers that the SRSG’s arguments raise two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, secondly, whether such standards shall be considered fully applicable to UNMIK.
30. 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).
31. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court on Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 71 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 § 75 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 § 70 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 70 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
32. The Court has acknowledged that “where the death [and disappearances] to be investigated under Article 2 occur in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at § 164; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 68 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, at §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited in § 70 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
33. 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 § 63 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian 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).
34. 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, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 18 above).
35. 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 § 71 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
36. However, the Panel considers that, in the context of most serious crimes committed against civilian populations, Article 2 requires that the authorities take all investigative efforts in order to establish the facts and bring perpetrators to justice. Such cases shall be given the highest priority.
37. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel therefore determines that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
38. *Compliance with Article 2 in the present case*
39. Turning to the circumstances of the present case, the Panel first addresses the issue of the burden of proof. At the admissibility stage, the Panel was satisfied that the complainant’s allegations were not groundless, thus it accepted the existence of a *prima facie* case: that Mr Marjan Melonaši disappeared in life threatening circumstances and that by the end of October 2001 at the latest, UNMIK became aware of the matter (see § 29 above).
40. Accordingly, applying the principles discussed above (see §§ 63 - 66), the Panel considers that the burden of proof has shifted to the respondent, so that it is for UNMIK to present the Panel with evidence of an adequate investigation as a defence against the allegations put forward by the complainant and accepted by the Panel as admissible. UNMIK has not discharged its obligation in this regard, as it has neither presented any investigative file, nor has it in a “satisfactory and convincing” way explained its failure to do so. Accordingly, the Panel will draw inferences from this situation.
41. Further, the Panel recalls the complainant’s statement that the disappearance of her son was reported to UNMIK, the ICRC, the Yugoslav Red Cross and the Serbian MUP. Despite the complainant’s submission that the disappearance was reported to UNMIK or KFOR on the same day, the file has no documents which could be attributed to that period of time. In turn, the SRSG accepts that in February 2002 the ICRC had informed UNMIK about Mr Melonaši’s disappearance (see § 56 above). However, according to the documents available to the Panel, the ante-mortem data for Mr Marjan Melonaši were provided to UNMIK by the ICRC even earlier, in October 2001 (see § 26 above).
42. Being unable to verify when the information about the disappearance did in fact reach the UNMIK authorities, the Panel considers that in any event by the end of October 2001, at the latest, UNMIK must have been fully aware about the disappearance of the complainant’s son.
43. The Panel notes the SRSG’s assertion that the file submitted to the Panel might be incomplete and the lack of any satisfactory explanation in relation to this (see §§ 27 and 61 above). Therefore, the Panel assumes that UNMIK cannot guarantee whether the file presented to the Panel is complete or not.
44. 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 competent local authorities; or UNMIK failed to retrieve the complete file from the current custodian. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the complete investigative file for its review (see § 61 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.
45. The purpose of this investigation was to establish the fate of the complainant’s son and to identify the possible 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.
46. 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 §§ 71 - 72 above).
47. The Panel notes that according to the 2000 Annual Report of UNMIK Police, it had “full investigative authority” in Prishtinё/Priština region from 19 September 1999. According to the statistical data, by 31 August 2000, UNMIK Police had 3,980 officers deployed throughout Kosovo, while by the end of September 2000 this number became 4,145[[6]](#footnote-6). Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
48. In analysing the investigative action aimed at the identification of the possible perpetrators responsible for the disappearance of Mr Marjan Melonaši and bringing them to justice, 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 (see the Panel’s position on a similar matter expressed in the case *X*., nos. 326/09 and others, opinion of 6 June 2013, § 81).
49. The Panel however notes that the available file does not reflect any action in relation to this case before August 2005, when the case was only registered and entered into the police database, although UNMIK was informed of it in October 2001. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 45 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the action of UNMIK authorities 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 § 71 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 § 20 above).
50. 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 § 74 above), bringing the assessment of the whole investigation within the period of the Panel’s jurisdiction.
51. The file shows that the investigation into Mr Melonaši’s disappearance was opened only in 2005 (see §§ 30 - 36 above). The earliest action documented in the investigative file available to the Panel was undertaken by the UNMIK OMPF only in November 2005 and that was a case review, which showed that the case file was empty, with no action undertaken, but that the case file had been closed by UNMIK Police for an unknown reason (see § 33 above). The WCIU database, in turn, indicated that the case had been entered into the UNMIK Police database only on 13 August 2005 (see § 36 above).

1. As discussed above, UNMIK clearly became aware of Mr Marjan Melonaši’s disappearance in October 2001. However, the investigative file shows that until the complainant had submitted a criminal report to UNMIK IP in 2005 (see § 30 - 31 above), UNMIK Police had done absolutely nothing on this matter. Moreover, even after the investigation was opened by UNMIK Police, in August 2005, no action by UNMIK Police whatsoever is reflected in the file. Although there were names of potential witnesses provided by Mrs Janković in her criminal report, the OMPF memorandum of November 2005 indicates that the investigative file was totally empty and the case was already closed for an unknown reason (see § 33 above).
2. The Panel notes that there were grounds to believe that the complainant’s son had in fact disappeared in obviously life-threatening circumstances. In this sense, the Panel recalls the statement of the UN Secretary-General, cited by the SRSG above (see § 49), which indicated that there was a high level of politically-motivated violence before the elections in Kosovo, scheduled for 28 October 2000. In the Panel’s view, the disappearance of a known journalist working for a Serbian media service of the RTK in broad day light in the middle of the capital city might have likely been connected to that “politically-motivated violence”. Nevertheless, UNMIK authorities never undertook any substantive action to investigate his disappearance, either immediately, or at a later time. Although the minimum necessary information about the complainant and other potential witnesses was available in the file, their statements had never been recorded. The police did not even visit the home or the workplace of Mr Melonaši, in order to at least gain a better understanding of the circumstances of the disappearance.
3. As of February 2005, UNMIK’s judicial authorities were also in possession of the complainant’s criminal report, addressed to the IP at the Prishtinё/Priština DPPO. Although the information in that report was sufficient enough, no substantive action whatsoever in this regard appears to have also been taken. The complainant had even proposed to the IP some investigative actions, which had never been undertaken (see § 31 above).
4. As the fate of Mr Marjan Melonaši had not been established, 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. However, as the file shows, the investigative files were reviewed only once, by the OMPF, in November 2005. Although the review showed that no investigation had been conducted, no action was taken. Likewise, the file indicates no action by IP with regard to the complainant’s criminal report. As the Panel has mentioned previously, a proper prosecutorial review of the investigative file might have resulted in additional recommendations, so that the case would not have remained inactive for years to come (see HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 160). Thus, in the Panel’s view, the review of the investigative files was far from being adequate.
5. The Panel further recalls the SRSG’s argument that the lack of progress in this case could be attributed to the “absence of witnesses or leads” (see § 57 above). In this regard, the Panel, again, stresses that almost any investigation at its initial stage lacks information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information at the beginning of the investigation 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 UNMIK Police simply waited for further information to appear by itself. In the Panel’s view, such a passivity by UNMIK Police may have led to the loss of potential evidence (see the Panel’s approach in the case *Ð.L.*, no. 88/09, opinion of 22 November 2013, at § 123).
6. The Panel is conscious of the fact that not all crimes can be solved and not all investigations lead to identification and successful prosecution of the perpetrator[s]. In this respect, the Panel has already referred above to the position of the European Court with regard to the nature of the procedural obligation under Article 2, which is “not an obligation of results but of means.” The Court clearly states that no violation of Article 2 exists if the authorities take all reasonable steps they can to secure the evidence concerning an incident and the investigation’s conclusion is based on thorough, objective and impartial analysis of all relevant elements (see §§ 71 - 72 above), even when no perpetrators are convicted (see e.g. ECtHR case *Palić*, cited in § 71 above, at § 65 or ECtHR [GC], *Giuliani and Gaggio v. Italy*, no 23458/02, judgment of 24 March 2011, §§ 301 and 326).
7. However, all possible actions in order to fulfill this investigative obligation must be undertaken before any decision on the disposition of a case is taken. In this case, before any witnesses were interviewed, the investigation appears to have been categorised as having “low potential” (see § 35 above), and it in fact stayed without any substantive action for the years to come. The Panel recalls in this respect 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 respect, the Panel also recalls the position of the European Court that “the authorities always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation” (see § 72 above).
8. Finally, the Panel would like to express its position with regard to the SRSG’s assertion that “it is clear the UNMIK made the investigative act possible under the circumstances to locate and identify the remains of Mr. Melonaši” and that “in the absence of information to the contrary … there is no violation of Article 2 ECHR, which can be attributed to UNMIK” (see § 57 above). In view of all above-described deficiencies and failures in the investigation, the Panel is concerned by this conclusion. As explained above, the file does not reflect any action by UNMIK authorities to follow the available leads, let alone pursuing any active search for new information. To the Panel this is sufficient evidence of UNMIK’s inaction. In addition, the Panel fears that such inaction indicates certain reluctance on the part of UNMIK Police to pursue the investigation, in particular when there were indications of politically motivated violence pointing towards persons associated with the KLA.
9. The Panel considers that, having regard to all the circumstances of the particular case, not all adequate steps were taken by UNMIK towards locating the mortal remains of the missing person, in continuing the investigation to identify the perpetrators and to bring them to justice. In this sense the Panel considers that the overall investigation was not adequate, contrary to the procedural requirements of Article 2 of the ECHR.
10. The apparent lack of any reaction from UNMIK Police, either immediately or at later stages,may have suggested to perpetrators that the authorities were either not able, or not willing to conduct investigations into disappearances of people, even those of certain public importance. 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. Certainly, in the Panel’s view, such inaction did not help UNMIK to defuse the “[t]empers and tensions … running high amongst all ethnic groups, exacerbated by reports of missing and dead persons”, mentioned by the SRSG (see § 53 above).
11. In relation to the procedural requirement of public scrutiny, the Panel recalls that Article 2 also entails that the victim’s next-of-kin be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
12. In this case, the complainant and her relatives were contacted in relation to her missing son only once, when the ICRC collected the ante-mortem data, in 2001. The only recorded contact with UNMIK authorities took place in November 2005, when she visited the OMPF office in Belgrade. On that occasion she “displayed disappointment and incomprehension” on finding out that the investigation had already been closed by UNMIK Police (see § 33 above). Before that, in her criminal complaint addressed to UNMIK IP she expressed her frustration that it was completely impossible for her to receive any information in relation to the investigation into her son’s disappearance from the authorities in Kosovo (see § 31 above).
13. Thus, the Panel considers that in this period the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR. Therefore, the Panel concludes that UNMIK failed to ensure that the complainant, or other members of her family who had a legitimate interest in the progress of this investigation, were involved in the investigative process to the extent necessary to safeguard their legitimate interests.
14. 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 Marjan Melonaši. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
15. **Alleged violation of Article 3 of the ECHR**
16. The Panel considers that the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment arising out of the continued disappearance of her son, as guaranteed by Article 3 of the ECHR.
17. **The scope of the Panel’s review**
18. 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 §§ 43 - 46 above).
19. 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 § 82 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 71 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).
20. 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).
21. **The Parties’ submissions**
22. The complainant alleges that the lack of information and certainty surrounding the disappearance of Mr Marjan Melonaši, particularly because of UNMIK’s failure to properly investigate his disappearance, caused mental suffering to her and her family.
23. Commenting on this part of the complaint, the SRSG rejects the allegations. He stresses that, while the complainant “implies” that she had suffered mental pain and anguish, there is no express allegation that this mental pain and anguish was a result of UNMIK’s response to her son’s disappearance. Furthermore, “[a]ny mental pain and anguish is stated to be the result of the alleged human rights violations suffered by the complainant.”
24. Therefore, according to the SRSG, this part of the complaint is “manifestly unfounded” and thus should be rejected by the Panel.
25. **The Panel’s assessment**
26. *General principles concerning the obligation under Article 3*
27. 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.
28. 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 § 63 above, at § 150).
29. 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.
30. 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).
31. 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 § 117 above, at § 94).
32. 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).
33. 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*, cited in § 83 above, at § 11.7).
34. 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).
35. 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 § 126 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 118 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 82 above, at § 140).
36. 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.
37. 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).
38. *Applicability of Article 3 to the Kosovo context*
39. 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 §§ 77 - 87 above).
40. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 18 above).
41. 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.
42. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.
43. *Compliance with Article 3 in the present case*
44. 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.
45. The Panel notes the proximity of the family ties between the complainant and Mr Marjan Melonaši, as the latter is the complainant’s son.
46. The Panel recalls the failure established above in relation to the procedural obligation under Article 2, despite the fact that UNMIK Police had the minimum necessary information to pursue investigation from the outset. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety.
47. As was shown above with regard to Article 2, no proper investigation was conducted in this case. The only recorded contact between the complainant and UNMIK authorities was in 2005, but no statement was ever taken from the complainant, any family member or witness. Until now, about 14 years after Mr Marjan Melonaši’s disappearance, they have received no information on his fate or on the status of the investigation. Furthermore, the file has a record of the complainant’s appeal for help to the UNMIK IP, as well as her expressed frustration about the process and the attitude of the authorities towards her son’s case (see § 112).
48. 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 her son. In this respect, it is obvious that, in any situation, the pain of the mother person who has to live in uncertainty about the fate of her son must be unbearable.
49. 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.
50. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
51. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
52. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate the disappearance of Mr Marjan Melonaši, and that its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
53. 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.
54. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 20 above), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
55. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

**-** In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, cited in § 122 above, at § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC]), *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the disappearance of Mr Marjan Melonaši will be established and that the possible perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;

**-** Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the disappearance of Mr Marjan Melonaši, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainant and her 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 her as a consequence of UNMIK’s behaviour.

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

**-** In line with the UN General Assembly Resolution on “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (A/Res/60/147, 21 March 2006), takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme, including restitution compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict;

**-** Takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring;

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, IN RELATION TO THE ABDUCTION AND DISAPPEARANCE OF MR MARJAN MELONAŠI;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE DISAPPEARANCE OF MR MARJAN MELONAŠI, 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 MR MARJAN MELONAŠI, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT AND HER FAMILY;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR.**
7. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
8. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
9. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov Marek Nowicki

Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCKM** - Coordination Centre of the Federal Republic of Yugoslavia and Republic of Serbia for Kosovo and Metohija

**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

**IP** - International Prosecutor

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

**KLA** - Kosovo Liberation Army

**MPU** - Missing Persons Unit

**NATO** - North Atlantic Treaty Organization

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

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

**RIU** - Regional Investigation Unit

**RTK** - Radio and Television of Kosovo

**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 an electronic source available at: http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx (accessed on 13 October 2014). [↑](#footnote-ref-3)
4. The ICMP database is an electronic source available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp\_details&l=en (accessed on 13 October 2014). [↑](#footnote-ref-4)
5. The OMPF database is not open to public. The Panel accessed it with regard to this case on 13 October 2014. [↑](#footnote-ref-5)
6. See.: Monthly Summaries of Military and CIVPOL personnel deployed in current United Nations Operations as of 31/08/00 and 30/09/00 // Available on UN official website [electronic source] - http://www.un.org/en/peacekeeping/resources/statistics/contributors\_archive.shtml (accessed on 15 October 2014). [↑](#footnote-ref-6)