

**OPINION**

**Date of adoption: 29 May 2014**

**Case No. 339/09**

**Zlatana MILANOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 29 May 2014,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 18 August 2009 and registered on 4 December 2009.
3. On 23 August 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on its admissibility.
4. In response, on 16 September 2011, UNMIK informed the Panel that it could not provide comments because of the non-availability of investigative files.
5. On 19 July 2012, the Panel requested UNMIK Police to locate the investigative file. UNMIK Police provided a response on 25 July 2012.
6. On 30 July 2012, the Panel requested information on the status of the investigation from the Prishtinё/Priština District Public Prosecutor’s Office (DPPO). The Prishtinё/Priština DPPO responded on 22 August 2012.
7. On 30 August 2012, the complaint was re-communicated to the SRSG for UNMIK’s comments on admissibility. On 19 November 2012, the Panel received UNMIK’s response.
8. On 6 December 2012, the Panel declared the complaint admissible.
9. On 11 December 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
10. On 1 April 2014, the SRSG provided UNMIK’s comments on the merits of the complaint, together with the relevant documentation.
11. On 7 April 2014, the complainant sent a letter to the Panel, requesting an update on the status of the case.
12. On 22 April 2014, the Panel requested UNMIK to confirm whether the disclosure of files concerning the case could be considered final. On the same day, UNMIK provided its response.
13. **THE FACTS**
14. **General background[[2]](#footnote-2)**
15. 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).
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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”.
24. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
25. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
26. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
27. **Circumstances surrounding the killing of Mr Krsto Milanović**
28. The complainant is the widow of Mr Krsto Milanović.
29. The complainant states that on 25 June 2000, her husband, together with their son-in-law, Mr I.S., went to collect some items from their house in Fushё Kosovё/Kosovo Polje, which was uninhabited at that time. On the way back, the vehicle they were both travelling in was shot at by an unidentified “Albanian” man. Mr Krsto Milanović sustained severe injuries and died in the hospital of Fushё Kosovё/Kosovo Polje shortly thereafter. Mr I.S., who was driving the vehicle, received minor injuries.
30. The date and time of death is confirmed by a handwritten document stamped with a round seal of the Fushё Kosovё/Kosovo Polje Health Centre, apparently prepared by the doctor on-duty in that clinic on 25 June 2000. This document states that Mr Milanović died at 13:30 on 25 June 2000, from the wounds caused by a firearm. According to the same document, the body was to be transported to Belgrade, for autopsy and burial. The death of the complainant’s husband was also confirmed by a copy of the Death Certificate issued on 12 July 2000 by the civil registry office of the Fushё Kosovё/Kosovo Polje Municipality, at that time displaced in Serbia proper.
31. The complainant also provides a copy of a statement from Mr I.S., recorded on 28 November 2003 by the officials of the Serbian Ministry of Internal Affairs (MUP). Mr I.S. clarified that on 25 June 2000 he and his father-in-law were together in a vehicle “Fiat 1300”, and that Mr L., who agreed to help moving belongings from Mr Krsto Milanović’s house (18, Nikola Tesla street) with his minivan, were headed towards Fushё Kosovё/Kosovo Polje. At around 12:30, after they had loaded the van, they were headed back to Graçanicë/Gračanica. Mr L. in his van filled with household items drove first, and Mr I.S. (driving) and Mr Krsto Milanović (in the front passenger’s seat) followed in their car, at about 100 metres. Around 200 metres after they started moving, while still on the same street, an Albanian man, around 30 years old, wearing black shirt and with a pistol, came out in front of their car and started shooting at Mr Krsto Milanović. Mr I.S. thought that at least seven shots were fired. Mr I.S. did not stop the car and drove straight to the “Russian Hospital” in Fushё Kosovё/Kosovo Polje. Mr Krsto Milanović was pronounced dead upon arrival there. Later in the evening of that same day, Mr Krsto Milanović’s body was transported to Belgrade to be autopsied. He was buried on 27 June 2000 in the Orthodox cemetery “Bežanijska Kosa”. Mr I.S. also stated that the crime scene was searched on that day by UNMIK Police and KFOR.
32. The same information is summarised in a criminal report, no. KU 16703, also dated 28 November 2003, addressed to Prishtinё/Priština DPPO, displaced in Serbia proper, by the MUP. A copy of this report is also provided by the complainant.
33. The complainant also provides the Panel with a copy of an undated printout from the UNMIK Police criminal information database, in relation to the case no. 2000-TC-1059. It records that the shooting resulting in the death of Mr Krsto Milanović took place on 25 June 2000, at 13:25, and that it was reported to the police at 14:40 on the same day. The database also refers to Mr I.S. as the second victim. No information on a suspect is in this form. The status of the case is shown as “closed” and “Referred for Prosecution.”
34. The complainant informs the Panel that although the matter was investigated by UNMIK Police, and that it was also reported to the Serbian Ministry of Internal Affairs (MUP), which in turn reported the matter to the Office of the Serbian War Crimes Prosecutor in Belgrade, to date she has not been informed about the outcome of the investigation. She also states that, as she had no information about the investigation, she complained to various bodies, but provides no details as to when and to which bodies.
35. **The investigation**
36. In the present case, the Panel received from UNMIK the investigative documents previously held by the UNMIK Police and the Prishtinё/Priština DPPO, which were released by the DPPO upon UNMIK’s request. In response to the Panel’s request, on 22 April 2014, UNMIK confirmed that no more relevant documents have been obtained.
37. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made them available under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigation steps taken by investigative authorities is provided in the paragraphs that follow.

*Investigation by UNMIK Police*

1. The part of the file reflecting the police action begins with a report by the patrol shift leader of the UNMIK Police Fushё Kosovё/Kosovo Polje Police Station, dated 25 June 2000, which provides an overview of the actions of the police patrol units in relation to the shooting.
2. According to that report, an UNMIK Police patrol vehicle was stopped by people near the “Russian Hospital” in Fushё Kosovё/Kosovo Polje, who told the police about the incident. The patrol also noticed a damaged white “Zastava” vehicle parked near the hospital. They further learned that one person, Mr Krsto Milanović, had been killed, while another, Mr I.S. had received light bodily injuries. The patrol took the surviving victim to the location where the shooting took place; the surviving victim explained that they were shot at by one person, who had stepped out of the gates of a burned house. The patrol searched the area for the perpetrator, but found no one. A KFOR patrol arrived at the scene and searched the surrounding area with the service dogs, but also with negative results. The patrol took statements from Mr I.S. and another person, who was working in the vicinity. The patrol officers also secured the area until the arrival of the RIU investigative team, to whom they passed all collected information.
3. It transpires from the statement of Mr I.S., recorded by UNMIK Police on 25 June 2000, that on that day he and Mr Krsto Milanović left Graçanicë/Gračanica to do to Fushё Kosovё/Kosovo Polje in a white “Zastava” vehicle, to collect some items from Mr Krsto Milanović’s house; they arrived there at around 10:00. At around 12:30, when they had finished, they headed back. At some moment, a person with a gun started shooting at them. As the windshield shattered, Mr I.S. closed his eyes and accelerated, driving towards the hospital. He stated that the gunman was wearing a black T-shirt, but that he would not be able to recognise that person.
4. The file further contains the statements of three persons, Mr S.R., Mrs S.J., and Mr N.B., who happened to be in the neighbourhood around the time of the killing, all recorded on 25 June 2000. All of them only heard shots, but did not see anything relevant.
5. A printout from the Kosovo Police Information System database in relation to this case reflects the same information as in the above mentioned document provided by the complainant (see § 29).
6. А memorandum of the UNMIK Police Prishtinё/Priština Regional Investigation Unit (RIU) is dated 25 June 2000 and bears no reference number. It states that the RIU contacted a witness, Mr A.J., the son of Mr V.J. who owned the property from which the perpetrator came out. Mr A.J. claimed that from 10:00 until 16:00 he was at a swimming area and thus did not know anything about the shooting. He further recommended interviewing his father.

1. Another RIU memorandum, also dated 25 June 2000, provides a brief overview of the actions and findings of an UNMIK Police forensic expert, Officer B.R., who searched the victim’s vehicle for evidence. It states that eight bullet holes were found.
2. A further RIU memorandum, also dated 25 June 2000, provides a brief overview of the RIU investigator’s actions at the Fushё Kosovё/Kosovo Polje hospital. It states that the investigator had spoken to a doctor, who described the injuries sustained by Mr I.S. (cuts from the broken glass and a wound from metal pieces on the left upper arm). According to the same doctor, the complainant’s husband was already dead when he was brought to the hospital, as he had apparently received a gunshot wound to the heart; no autopsy was carried out. The doctor also stated that the body would not be released to Prishtinё/Priština hospital; instead, UNMIK Police would be allowed to examine the body in the Fushё Kosovё/Kosovo Polje hospital. Subsequently, the RIU investigator, together with Officer B.R., the forensic expert, inspected and photographed Mr Krsto Milanović’s body, showing the three gunshot wounds (one in the right shoulder and two in the back).
3. The file further contains reports by the forensic expert, Officer B.R., regarding his involvement in the investigation. The Forensic Identification Report, dated 25 June 2000, states that the forensic unit was contacted and asked to attend the scene at 13:30 on that day; two officers, including B.R., were dispatched there and they reached the scene at 14:15. The report further describes the process and the results of the examination of the crime scene, the vehicle, and the body of the victim. At the scene, five spent shell casings were recovered. Attached to the report is a sketch of the crime scene made by the forensic team, dated 25 June 2000. Also attached to the report is an index of 36 photographs taken at the crime scene, dated 26 June 2000. However, the actual photographs are not in the file.
4. By a memorandum, dated 25 June 2000, the RIU informed the President of the Prishtinё/Priština District Court, the UNMIK Department of Judicial Administration and a number of other relevant UNMIK offices, of the fact that UNMIK Police were not able to contact any of the three investigating judges on call, to invite them to participate in the crime scene search, as required by the law. A handwritten note by the UNMIK Police Prishtinё/Priština Regional Commander at the bottom of the memorandum reads:

“This is an ongoing problem. The judges attitude rather defeats the purpose of them being on call. If they are not prepared to function in an appropriate fashion regarding ‘call outs’ perhaps new judges should be appointed.”

1. An RIU memorandum, dated 1 July 2000, bearing a reference nos 00-072 and 00-074, states that, on 1 July 2000, an RIU investigator visited Mr V.J. in his house in Fushё Kosovё/Kosovo Polje. According to the investigator, when he spoke with Mr V.J., the latter appeared very nervous, even though he was not accused of anything. In the yard of the house, a number of disassembled electronic devices and tools were seen. As the same RIU investigator was in parallel investigating another murder of two Serbian men, who were killed by a remotely-detonated explosive device, he suspected Mr V.J. of being somehow connected to that double murder. Thus, the RIU investigator requested all possible intelligence information in relation to Mr V.J.
2. According to an undated report of a patrol officer of the UNMIK Police Fushё Kosovё/Kosovo Polje Police Station, a week after Mr Krsto Milanović was killed, a Kosovo-Serbian approached him and reported that the house of the victim was broken into. The UNMIK Police patrol, together with a KFOR unit, checked the house and found that doors were missing. The rest of the file contains no further information in relation to the damage to the victim’s house.
3. The file further contains a memorandum, dated 25 July 2000, from the RIU to an Investigating Judge (unidentified), requesting permission to conduct some forensic examinations of the collected evidence and subsequently to hand them over to the court. The attached “list of exhibits” reveals that the request concerned the five shell casings collected at the crime scene (see above). The subsequent Order for Examinations (Analyses) to Crime Laboratories Unit, issued by the RIU, dated 7 August 2000, confirms that a “sealed pack containing five shell casings and pieces of metal” were to be sent to the forensic laboratory. The field “Questions” of this order reads: “1. what the metal fragments originate. 2. if possible determine the exact calibre”.
4. On 17 August 2000, Mr V.J. was interviewed in relation to the killing of Mr Krsto Milanović. However, he spoke only about his own house, which was allegedly burned down during the NATO bombing campaign, by a certain Mr D.S., who had also threatened to kill Mr V.J.
5. On the same day, Mrs S.J. (see § 36 above) was re-interviewed and another person, Mr F.A., interviewed, but neither provided any substantive details.
6. According to a number of RIU memoranda in the file, on 18, 21 and 22 August 2000, an RIU investigator attempted to contact an UNMIK Police intelligence officer of the Fushё Kosovё/Kosovo Polje Police Station; they had agreed to meet on 23 August 2000.
7. Subsequent to those reports, is an undated, handwritten, document apparently prepared by the above-referred intelligence officer. It states that Mr Krsto Milanović was accused of looting and burning the house of Mr V.J. a year prior to the killing, and that Mr V.J. had been searching for Mr Krsto Milanović since that time. It also states that the victim’s family, some of whom still resided there, had agreed that they would sell their houses as one property, but that recently one of those houses was sold, which was the reason why the victim visited his house. The same report has a hand-drawn sketch of the area, identifying the positions of the houses of the victim’s family, the house of Mr V.J., and the location of the vehicle at the moment of the attack (in front of Mr V.J.’s house).
8. On 19 August 2000, Mr I.S. was interviewed again. He stated that on 26 June 2000 he left to go to Belgrade for the funeral of his father-in-law, and only returned on 18 August 2000. He confirmed that the reason for his father-in-law to visit his house in Fushё Kosovё/Kosovo Polje on 25 June 2000 was that Mr Krsto Milanović wanted to sell the house, but as he could not find a buyer, he came to remove some valuable items, so that no one would steal them. Mr I.S. was not aware whether any agreement for the sale of the house had been concluded.
9. According to a report, dated 21 August 2000, on that day an RIU investigator visited the victim’s house in Fushё Kosovё/Kosovo Polje. He discovered that Mr B.Z. and his family had lived in the neighbouring house, no. 20, for about two weeks. Mr B.Z. stated that on 13 August 2000 he had bought this house from Mr D.M., the victim’s brother. Mr B.Z. did not show any documents to prove the purchase, as they were reportedly awaiting registration, but promised to present them by 13 September 2000 at the latest. He continued that, a few days after Mr Krsto Milanović’s killing, some unknown “Albanians” usurped the victim’s house. Mr D.M. managed to remove them from the property and then contacted Mr B.Z. and told him that he also wanted to sell Mr Krsto Milanović’s house, and that he would then give the money to the latter’s family. A brother of B.Z. bought the house. Mr B.Z. also provided the contact details of Mr D.M. However, no follow-up action on this information is in the file.
10. By a request dated 23 August 2000, the RIU requested Prishtinё/Priština Regional Intelligence Unit to search their database in relation to 13 persons (including the surviving victim Mr I.S., the suspect Mr V.J., his son Mr A.J., and the witnesses Mrs S.J., Mr F.A.). Subsequently, the file contains information that Mr V.J. was accused of a fraud on 27 March 2000 and that his son, Mr A.J. was arrested on 15 January 2000, for a car theft. No further information with regard to those incidents, or of the investigator’s conclusions as to their relevance to this investigation, are in the file.

*Investigation by Kosovo Police and Prosecutor*

1. On 22 August 2012, in response to the Panel’s request, the Prishtinё/Priština District Public Prosecutor stated that the criminal report of the RIU, dated 29 June 2009, in relation to the killing of Mr Krsto Milanović (case no. 2000-074) was received by the Prishtinё/Priština DPPO on 30 June 2009. The said report was filed against an unknown person who, on 25 June 2000, shot and killed Mr Krsto Milanović. The other documents relevant to this investigation were subsequently released by the DPPO to UNMIK (see § 31 above).
2. Subsequently, on 28 January 2011, the DPPO requested the RIU to undertake additional investigative action in relation to the killing of Mr Krsto Milanović (DPPO’s case no. PPP nr.69-6/10). On 8 August 2011, the RIU provided its report to the DPPO, stating that the information collected to that day does not lead to any suspect, and that the RIU will continue to investigate and will keep the DPPO informed.
3. That RIU report shows that the police interviewed Mr A.J., who stated that his father, Mr V.J. had passed away. He was not asked any questions in relation to the murder of Mr Krsto Milanović. The fact of Mr V.J.’s death was confirmed by a death certificate.
4. In addition, as the forensic examination of the shell casings found at the scene had not been carried out before, arrangements were made for it. The shell casings were located in an evidence storage room; an order for their expert examination was issued on 16 March 2011, and the results were received on 8 April 2011. The expert concluded that the ammunition used was of caliber 7.62 X 25 mm, and that all five shell casings were shot from the same weapon. However, no match with any registered firearm was found. None of the documents in relation to this forensic examination mention the “metal fragments”, which were also collected by UNMIK Police forensics at the crime scene on 25 June 2000 (see § 45 above).
5. On 16 March 2011, the RIU contacted Mr I.S. and asked him to give a statement. Mr I.S. responded that he had nothing to add to what he had stated to UNMIK Police previously and that he would respond only if invited to do so by a court.
6. The file subsequently obtained from the DPPO by UNMIK contains copies of all documents in relation to the above-referred investigative actions.
7. **THE COMPLAINT**
8. The complainant complains about UNMIK’s alleged failure to properly investigate the murder of her husband. 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).
9. **THE LAW**
   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 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 complaint, 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 complainant complains 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 § 62). 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 murder of her husband. The complainant also states that she was not informed as to what the outcome of the investigation was. In her letter to the Panel dated 7 April 2014 the complainant stated that she had filed “many complaints and received no answer from UNMIK, EULEX or Kosovo Police on the case resolution.”
17. In his comments on the merits of the complaint under Article 2, the SRSG accepts that Mr Krsto Milanović was killed unlawfully. He notes, however, that the murder occurred “in the early days of UNMIK’s establishment”, when “the security situation in post-conflict Kosovo remained tense. KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.” These difficult circumstances “in this formative period of the Mission”, according to the SRSG, were a cause for “limited progress in the identification of the perpetrators of such crimes. The SRSG stresses that “although Mr Milanović’s killer has not been identified, the investigations into his murder are still ongoing.”
18. The SRSG accepts UNMIK’s responsibility to conduct an investigation in the case of Mr Krsto Milanović under Article 2 of the ECHR, procedural part. In the words of the SRSG, “the essential purpose of such investigation is 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.”
19. The SRSG considers that such an obligation is two-fold, including “an obligation to determine through investigation the fate and/or whereabouts of the missing person”; and “an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the killing of the deceased person”.
20. 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.”

1. In the view of the SRSG, in the aftermath of the Kosovo conflict, UNMIK was faced with a similar situation as the one in Bosnia. Many of those persons who were unaccounted for were abducted, killed and buried in unmarked graves inside or outside Kosovo, which made very difficult locating and recovering their mortal remains.
2. The SRSG further argues that fundamental to conducting effective investigations “is a professional, well trained and well resourced police force” and that “[s]uch a force did not exist in Kosovo in 1999 and had to be established from scratch and progressively developed.” In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service, 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. “Although in this particular case the death was established to be a result of severe bleedings from fatal injuries caused by fire-arm”, the SRSG still clarifies that “in general, UNMIK Police confronted difficult challenges in exercising its law enforcement role that was gradually transferred from KFOR throughout 1999-2000”. He further refers in this regard 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 international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police. He further states that these investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, 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 which are not faced with the high number of cases of this nature associated with a post-conflict situation.
2. With regard to the investigation aimed at identifying the perpetrator(s) responsible for the murder of the complainant’s husband and bringing them to justice, the SRSG, first, asserts that “although the perpetrators of the crime have not still been arrested, the fate of the deceased was established, and his mortal remains were handed over to the family and eventually transported to Serbia [proper] for post mortem analysis and burial.”
3. Second, the SRSG stresses that UNMIK police attended the crime scene and in cooperation with KFOR conducted its search, collected spent cartridges at the scene, interviewed potential suspects and neighbours with a view to identifying the perpetrators of the crime. However, “[a]s the search revealed no evidence pointing on the identity of the killer, the case was handed over to the Regional Murder squad for further follow up actions.” However, according to the SRSG, “none of the statements collected at that time gave any conclusive leads to arrest the perpetrators for prosecution.”
4. The SRSG also recalls that Mr I.S. stated to UNMIK Police that he would not be able to recognise the shooter. He also notes that, although the file contains a request for ballistic examination of the shell casings found at the crime scene, it is not clear from the file whether such an examination was in fact carried out, or whether any other actions were taken in relation to the crime.
5. Furthermore, according to the SRSG, “the fact that the murder occurred during a very tense period and the family of the deceased preferred to transport the body *post mortem* analysis and burial in Belgrade meant that there was very little evidence that UNMIK Police could have obtained on the deceased body as it was transported to Belgrade immediately after the shooting.”
6. The SRSG also provides an overview of the actions by the Prishtinё/Priština DPPO and the Kosovo Police, in 2009-2011 (see §§ 53 - 58 above). The SRSG in particular mentioned that, when approached by Kosovo police in 2011, Mr I.S. refused to give any statement (see § 57 above).The SRSG reiterates that, although the police have not been able to find any leads confirming the identity of the perpetrators of the murder, the case is still considered active.
7. Concluding his comments, the SRSG states that, considering that the investigation is still ongoing, and “[t]aking into account the general environment in which Mr. Milanović was shot and killed, the limited recourses that UNMIK Police had in its disposal to investigate serious crimes in general, the failure to find the perpetrators of this murder cannot, viewed in itself, be deemed to be a violation of Article 2 of the ECHR.”
8. Therefore, the SRSG maintains his position that there was no violation of Article 2 of the ECHR by UNMIK.
   1. **The Panel’s assessment**
9. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) in that UNMIK Police did not conduct an effective investigation into the murder of Mr Krsto Milanović.
10. *Submission of relevant files*
11. At Panel’s request, on 1 April 2014, the SRSG provided copies of limited documents related to this investigation, which UNMIK was able to recover from the Prishtinё/Priština DPPO. The SRSG also noted that to that date no investigative files had been received from EULEX.
12. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005*,* § 56).
13. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2.
14. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative documents. However, UNMIK has not provided any satisfactory explanation as to why the documentation may be incomplete, nor with respect to which parts.
15. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaint on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of15 March 2011, § 146).
16. *General principles concerning the obligation to conduct an effective investigation under Article 2*
17. The Panel notes that the positive obligation to investigate unlawful killings and 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 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).
18. In order to address the complainant’s allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
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).
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 § 65 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, § 312; and *Isayeva v. Russia*, cited above, § 212).
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 § 88 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).
22. 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 § 89 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 89 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).
23. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191).
24. The United Nations also recognises the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them…” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; see also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives; UN Document A/HRC/22/52, 1 March 2013).
25. *Applicability of Article 2 to the Kosovo context*
26. The Panel is conscious that the murder Mr Krsto Milanović took place a year after the deployment of UNMIK in Kosovo, in the aftermath of the armed conflict, when crime, violence and insecurity were reportedly still rife.
27. 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.
28. The Panel considers that this raises two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, second, whether such standards shall be considered fully applicable to UNMIK.
29. 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).
30. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court of Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 90 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 § 92 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 § 89 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 89 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
31. The Court has acknowledged that “where the death […] to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and […] concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, § 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 § 88 above, at §§ 86 ‑ 92; ECtHR, *Ergi v Turkey,* cited above, §§ 82 - 85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, §§ 215 ‑ 224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158 - 165).
32. 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 § 87 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russi*a*n Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
33. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 19 above).
34. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel thus agrees with the SRSG that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
35. Lastly, in response to the SRSG’s objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 90 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
36. *Compliance with Article 2 in the present case*
37. Turning to the particulars of this case, the Panel notes the complainant’s statement that the murder of Mr Krsto Milanović was reported almost immediately to UNMIK Police, and subsequently to the MUP and a Prosecutor’s Office in Serbia proper. The documents available in the file confirm that UNMIK authorities were informed about this incident shortly after it took place and that the investigation was opened on the same day (see §§ 29, 33 and 37 above).
38. The purpose of this investigation was to discover the truth about the killing of the complainant’s husband and to identify the perpetrators. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
39. 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 §§ 90 - 91 above).
40. The Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 90 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 § 22 above).

1. The Panel also notes in this regard that according to the 2000 Annual Report of UNMIK Police, already by 19 September 1999, UNMIK Police had full law enforcement responsibility in Prishtinё/Priština region. 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.
2. The Panel is mindful that in any investigation 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).
3. In this respect the Panel recalls the facts of this case, which clearly show that the information about the shooting had reached UNMIK Police about an hour after the incident; the scene was attended by a police patrol and a KFOR unit, who secured it and tried to find a suspect. RIU investigators and forensic experts had also attended the scene immediately, conducting a number of necessary and meaningful investigative steps, such as crime scene search and recording, evidence collection, canvassing the area, recording statements of the surviving victim and possible witnesses, examining the victim’s body etc. The criminal investigation into this matter was likewise opened on the same day (see §§ 33 - 41 above).

1. The Panel needs to stress that in this case there was very little doubt about the illegal nature of the killing of Mr Krsto Milanović. UNMIK Police’s action locating and preserving evidence for further investigation and possible criminal proceedings appears to have been prompt and adequate to the circumstances.
2. However, the Panel considers that this obligation does not only require initiation of an investigation as quickly as possible, but also to avoid any unnecessary delay in its completion, regardless of the outcome. Assessing this investigation from this perspective, the Panel cannot disregard the fact that after August 2000 the investigation was simply “dropped” by the RIU, as no action on the file is registered for almost nine years, up until June 2009, when the all collected information was put in a criminal report and submitted to the Prishtinё/Priština DPPO, for review and further action (see §§ 52 and 53 above). The Panel can see no reason for such an abrupt interruption of the investigation, not even half-way through the process. Nor was UNMIK able to present any plausible explanation for this interruption, and the subsequent extraordinarily long period of complete inaction.
3. In this respect, the Panel recalls its position in relation to the categorisation of cases into “active” and “inactive” expressed in similar cases before it (see e.g. HRAP, *B.A*., no. 52/09, opinion of 14 February 2013, § 82, or HRAP, HRAP, *Pejčinović*, no. 89/09, opinion of 13 March 2014, at § 178). In its view, 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.”
4. Unlike in many other similar cases before the Panel, in this case the police actively searched for information and leads at the initial stage, and actually found them (see, *a contrario*, HRAP, *P.S.*, case no. 48/09, opinion of 31 October 2013, § 107). However, the unexplained and unnecessary nine-year period of inaction after the initial stage led to the loss of potential evidence (e.g. the main suspect had died, [§ 55], some physical evidence disappeared [§ 56], the surviving victim refused to give any more statements to the police [§ 57]).
5. Even if in this case the investigators did not see any prospect of success, and they wished to concentrate on other, more “promising” investigations, they should have at least filled the information gaps, such as the lack of an autopsy report on the victim, forensic examination of the shell casings and reporting the matter to the prosecutor, for review. However, the autopsy report is not in the file even now, while the other actions were undertaken only in 2011.
6. The Panel cannot overlook the fact that the speediest possible forensic examination of the shell casings would be of the utmost importance. That would have provided the investigators at the minimum with information about the type and kind of weapon used, thus allowing them to narrow the search. In addition, that particular weapon could have been registered in the forensic database, which would have allowed the investigators to draw proper conclusions and to plan further actions accordingly. However, regrettably, these steps were not taken and this obvious line of inquiry was not pursued. The Panel is conscious that even in 2011 there was still no match found in the forensic database for the weapon used in this crime. Nevertheless, this does not undermine the general conclusion that such action should have been done as soon as possible after the relevant evidence was collected.
7. The Panel recalls its position given in a similar context in relation to police actions in situations characterised by the lack of evidence. On a number of occasions, the Panel has noted that, first, almost any investigation at its initial stage lacks a significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. Second, in this case the file, as made available to the Panel, shows that the police had leads to work upon provided by the survivor victim from the very beginning, and it actually did conduct many investigative actions to follow up on them, although the work was not completed (see e.g. HRAP, *Pejčinović*, cited in 114 above, at § 189).
8. Assessing this investigation against the need to take reasonable investigative steps and to follow the obvious lines of enquiry to obtain evidence, the Panel takes into account that a properly maintained investigative file should have included records of all investigative actions and particularly of the interviews with the complainant, suspects and all potential witnesses to the disappearance. In all cases, such interviews should take place as soon as possible and should be recorded and retained in the case file[[3]](#footnote-3).
9. The Panel notes in this context that the RIU re-interviewed the surviving victim, Mr I.S., visited the house outside which the killing took place and spoke with Mr V.J. (see § 43 above), and later recorded his statement (see § 46 above), sought intelligence information in relation to the case and received some of it (see §§ 46, 48, 49 and 52 above) and attempted to arrange for a forensic examination of the spent shell casings and metal pieces found at the crime scene. However, as explained above, this was followed by a 9-year period during which the investigation was completely stalled, for no visible reason, when there were still obvious and necessary actions to be done, investigative actions to be completed and leads to pursue.
10. In particular, as it was mentioned above (see § 51), the RIU discovered that less than two months after the killing, Kosovo Albanians moved into the houses of the victim and his brother, having reportedly bought them from Mr D.M., Mr Krsto Milanović’s brother. This information should have been assessed in light of the fact that at that time a lot of criminal activity around the immovable property belonging to Kosovo Serbian residents was taking place, and that only two days before Mr I.S., also the victim’s very close relative, had testified that he was not aware of any agreements for the sale of the house. Thus, in the Panel’s view, the RIU should have at least insisted to see the purchase documents from Mr B.Z. and his brother, and interviewed Mr D.M. However, this was never done.
11. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after the critical date the failure to conduct the necessary investigative actions persisted. Accordingly, inadequacies existing up until that date were not addressed. Thus, in accordance with the continuing obligation to investigate, the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
12. However, as no action to rectify the above deficiencies in this particular case was taken in this period, the Panel considers that UNMIK failed to take all reasonable steps towards identification of the perpetrator and bringing him to justice, as is required by Article 2 of the ECHR (see § 107 above).
13. The Panel also recalls the SRSG’s remark regarding the refusal of Mr I.S. to give a statement to the Kosovo police in March 2011 (see §§ 57 and 78 above), thus suggesting the possibility of a lack of cooperation from him.
14. With respect to his refusal to give further statement in 2011, the Panel, first, would like to reiterate that Mr I.S. had said to the police that he had nothing to add to the statements which he had given previously to UNMIK Police, which is normally considered as the witness’s confirmation of this previous statement. Second, in the Panel’s view, Mr I.S. had understandable reasons to be irritated by a request to give another statement, almost 11 years after the incident. Finally, as he said that he would not be able to recognise the shooter even a few hours after the incident, it is unlikely that he would have been able to do so 11 years later.
15. Furthermore, since no person suspected in the killing of Mr Krsto Milanović had been identified, UNMIK Police was obliged to use the means at their disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform their relatives regarding the progress of this investigation. However, the file does not show any review of this case until 2009, when the law enforcement functions had already been taken over by EULEX, whereas this particular case was further handled by Kosovo police and prosecutors.
16. Although the handover of the file to EULEX effectively ends the Panel’s jurisdiction *ratione temporis* in relation to this case, the Panel cannot disregard the fact that upon review of the file, in 2011, the responsible Kosovo prosecutor ordered the police to undertake certain actions, in order to fill the gaps in the investigation, but in vain. In the Panel’s opinion, a proper prosecutorial review of this investigation at an earlier stage could have prompted UNMIK Police to undertake additional actions, so that the case would not have been left without any proper action for years to come (see e.g. HRAP, *Stojković*, case no. 87/09, opinion of 14 December 2013, § 160; HRAP, *Pejčinović*, cited in § 114 above, at § 193).
17. The Panel is conscious that not all crimes can be solved and not all investigations can lead to the identification and prosecution of the perpetrator(s). The Panel 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 the reasonable steps they can to secure the evidence concerning an incident and the investigation’s conclusion are based on thorough, objective and impartial analysis of all relevant elements (see §§ 90 - 91 above), even when no perpetrators are convicted (see e.g. ECtHR case *Palić*, cited in § 90 above, at § 65 or ECtHR [GC], *Giuliani and Gaggio v. Italy* , no 23458/02, judgment of 24 March 2011, §§ 301 and 326).
18. Finally, in relation to the procedural requirement of public scrutiny, the Panel recalls that Article 2 also entails that the victim’s next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests. As transpires form the documents available to the Panel, only Mr I.S. was interviewed by the police. Neither the complainant, nor any other members of his family were approached by the police.
19. The file in the Panel’s possession does not reflect any contact with the complainant or her other family members, with an aim to keep them informed of the investigation. In this respect, the Panel recalls the complainant’s statement that despite numerous complaints, she received “no answer from UNMIK, EULEX or Kosovo Police on the case resolution.”
20. In view of the mentioned procedural shortcomings, the Panel considers that 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 involve the complainant in the investigation into the killing of her husband to the extent necessary to safeguard her legitimate interests.
21. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the killing of Mr Krsto Milanović. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
22. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
23. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
24. The Panel notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for the killing of Mr Krsto Milanović, and that its failure to do so constitutes a further serious violation of the rights of the victim and his next-of-kin, in particular the right to have the truth of the matter determined.
25. 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.
26. 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 § 22), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
27. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

* + - In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC]), *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the diplomatic means available to it *vis-à-vis* EULEX and the Kosovo authorities, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the killing of Mr Krsto Milanović will be established and that perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
    - Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the killing of Mr Krsto Milanović 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.

**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. **RECOMMENDS THAT UNMIK:**
3. **URGES EULEX AND OTHER COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE KILLING OF MR KRSTO MILANOVIĆ IS CONTINUED IN ACCORDANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
4. **PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE KILLING OF THE COMPLAINANT’S HUSBAND, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT AND HER FAMILY;**
5. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION OF THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 OF THE ECHR.**
6. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
7. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
8. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov Marek Nowicki

Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit

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

**DOJ** - Department of Justice

**DC** - District Court

**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

**IPP** - International Public Prosecutor

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

**KLA** - Kosovo Liberation Army

**MoU -** Memorandum of Understanding

**MPU** - Missing Persons Unit

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

**NATO** - North Atlantic Treaty Organization

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

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

**RIU** - Regional Investigation Unit

**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. See: United Nations Manual On The Effective Prevention And Investigation Of Extra-Legal, Arbitrary And Summary Executions, adopted on 24 May 1989 by the Economic and Social Council, Resolution 1989/65. [↑](#footnote-ref-3)