

**OPINION**

**Date of adoption: 23 October 2015**

**Cases Nos 153/09 and 181/09**

**Lidija MILENKOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 23 October 2015,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The two complaints were filed on 8 April 2009 and registered on 30 April 2009.
3. On 2 February 2011, the Panel requested further information from the complainant. No response was received.
4. On 6 April 2012, the Panel decided to join the cases pursuant to Rule 20 of the Panel’s Rules of Procedure.
5. On 23 April 2012, the complaints were communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on admissibility.
6. The SRSG provided UNMIK’s response on 4 June 2012.
7. On 17 August 2012, the Panel declared the case no. 153/09 admissible and case no. 181/09 partially admissible.
8. On 10 September 2012, the Panel forwarded its decision on admissibility to the SRSG requesting UNMIK’s comments on the merits of the complaints, as well as copies of the investigative files relevant to the case.
9. On 21 November 2014, the SRSG presented UNMIK’s response in relation to the merits of the complaints, together with the copies of the investigative files.
10. On 2 July 2015, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the case could be considered final.
11. On 3 July 2015, UNMIK provided its response.
12. **THE FACTS**
13. **General background[[2]](#footnote-2)**
14. The events at issue took place in the territory of Kosovo during the armed conflict and continued after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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”.

1. 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. A specialised Bureau for Detainees and Missing Persons (BDMP), responsible for centralising information received by civilian officers, was established within the Office of the SRSG[[3]](#footnote-3). 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 families of the missing. All information collected by the BDMP was transferred to the OMPF[[4]](#footnote-4). 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.
2. 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.
3. 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.
4. **Circumstances surrounding the disappearance of Mrs Milica Radunović and the abduction and killing of Mr Miloš Radunović**
5. The complainant is the daughter of Mrs Milica Radunović (case no. 153/09) and Mr Miloš Radunović (case no. 181/09).
6. The complainant states that Mrs Milica Radunović was abducted on 19 or 20 April 1998 from the village of Dashinoc/Dašinovac in Deçan/Dečani Municipality. She also states that Mr Miloš Radunović was abducted from their home in the same village on 23 April 1998. Since these events, Mrs Milica Radunović was never seen again and Mr Miloš Radunović was never seen alive again.
7. The complainant states that the abduction of Mrs Milica Radunović was reported to the Serbian Ministry of Internal Affairs, the OSCE, the ICRC, KFOR and the Yugoslav Red Cross, and the abduction of Mr Miloš Radunović was reported to the Serbian Ministry of Internal Affairs.
8. On 5 May 2008, the ICRC opened a tracing request for Mrs Milica Radunović which remains open.[[5]](#footnote-5) Likewise, her name is included 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[[6]](#footnote-6). The entry in relation to Mrs Milica Radunović in the online database maintained by the ICMP[[7]](#footnote-7) gives 20 April 1998 as her date of disappearance and reads in other relevant fields: “Sufficient Reference Samples Collected” and “DNA Match Not Found”.
9. Concerning Mr Miloš Radunović, his mortal remains were found by Serbian authorities in September 1998. His mortal remains were identified by UNMIK OMPF on 5 October 2005 and were handed over to the complainant’s family on 17 August 2006.
10. The entry in relation to Mr Miloš Radunović in the online database maintained by the ICMP gives 23 April 1998 as his date of disappearance and reads in other relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this person on 6-29-2011 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters.”
11. **The investigation**

*Disclosure of relevant files*

1. On 21 November 2014, UNMIK provided to the Panel documents which were held previously by the UNMIK MPU and WCIU. On 3 July 2015, UNMIK confirmed to the Panel that all files in UNMIK’s possession have been disclosed. Evidence of the investigation into the abduction and killing of Mr Miloš Radunović by the UN International Criminal Tribunal for the Former Yugoslavia (ICTY) was obtained by the Panel from the ICTY webpage.
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 the investigative authorities is provided in the paragraphs to follow.

*MPU and WCIU files in relation to Mrs Milica Radunović*

1. The MPU part of the investigative file consists of a Victim Identification Form for Mrs Milica Radunović, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 26 above). Besides her personal details and ante-mortem description, it provides the name and complete contact details of the complainant in Serbia proper.
2. The MPU file contains a document entitled “Gravesite Assessment Form” which is dated 11 March 2002, affixed with the WCIU file no. 0126/inv/02 and cross-referenced with the file no. EX 2002-002. The Form describes the grave site in the village of Dashinoc/Dašinovac in Deçan/Dečani Municipality where MPU personnel performed an exhumation in a well which was “filled up with all sorts of material and tree branches.” The Form also provides the name of the contact person [V.S.] that showed the MPU personnel around the site. Attached to the Form are numerous scanned copies of photographs which detail how to find the grave site as well as pictures of the well itself. Additionally, attached to the Gravesite Assessment Form is a document labelled “Information Statement”, dated 11 March 2002, affixed with the WCIU file no. 0216/INV/02 and cross-referenced with the file no. EX 2002-002. Under the heading labelled “Narrative”, the document states (original grammar preserved):

“[MPU officers] went to village Dasinovac in order to contact witness who has known more information regarding this case. When we arrived to village, we met with witness [V.S.] that [was out of Kosovo during the incident and]…didn’t have further information. We asked him about a house where belongs to Serbian family and well where they had lived before the conflict. Witness [V.S.] showed one house where is approximately 500m. ahead of his house. Serbian family had lived at this house and used the well before. So far nobody has been living. He added he never visited the property. In addition he stated some witness from his village whose names [S., K. and I.] that they could have more information about this property. Later on we visited the spot and saw the house where was destroyed, besides that well was filled with garbage. Nobody can use this well.”

1. Under the heading “Summary”, the Information Statement notes that “[r]egarding the information we possess and on visual examination of the well there is a [reasonable doubt as to the existence] of human remains in the well. Also there is an indication that nobody so far investigates this well.” Under the heading labelled “Conclusion”, the document states “[c]onsidering that well is filled up with all sorts of material and tree branches, well should be clean up and exam contents.”
2. The final attachment to the “Gravesite Assessment Form” is an untitled print-out, generated from the database on 9 August 2004 and affixed with the WCIU file no. 0126/inv/02 and cross-referenced with the file no. EX 2002-002. The print-out provides some basic details information about the exhumation, including that it started on 26 August 2002 with the field labelled “date finish” left blank. Under the heading labelled “Invest. Notes”, the print-out states “One body in the well. The exhumation was done in two parts and was concluded negative.” Under the heading labelled “Results”, the print-out states “Handed to Exhumation.” Under the heading labelled “Exhumation Result”, the print-out states “Negative”.
3. The MPU file contains one undated Case Continuation Report for Mrs Milica Radunović, affixed with the file no. 2002-000470. The Report contains three inputs, with dates ranging from 21 May 2002 to 20 June 2002. The first two inputs, both dated 21 May 2002, state “input D.B. OK”. The third input, dated 20 June 2002, states “added duplicate from ICRC”.
4. The MPU file contains a series of documents related to the transmission of a voluminous amount of information for potential criminal investigation by UNMIK from the Serbian government, specifically, the Coordination Centre of Federal Republic of Yugoslavia and Republic of Serbia for Kosovo and Metohija to an UNMIK International Prosecutor on 29 October 2002. The material includes five binders of information related to allegations of criminal activity in Kosovo. The cover letter from the Federal Republic of Yugoslavia that accompanied the five binders states, “[a]s an annex I deliver to you the documents concerning the following issues:
	1. Overview of the mass grave sites and locations on Kosovo and Metohija;
	2. Lists of persons who have committed certain number of abductions on Kosovo and Metohija;
	3. Overview of the locations on Kosovo and Metohija that are (according to the non confirmed information) possible detention centres- camps where certain groups of Albanian people hold and hide kidnapped persons;
	4. Overview of the persons employed in public services at Interim Institutions in Kosovo and Metohija who are connected with activities of Kosovo Liberation Army;
	5. List of persons who have organized and committed murders or abductions, ignition or destroying of real estates and other criminal acts to forcibly remove Serbs and other non-Albanian population from Kosovo and Metohija and from Continental Safety Zone.”
5. Of all of these materials that were also attached to the cover letter and placed in the investigative file, the binder entitled “Overview of Sites of Mass Graves and Gravesites in Kosovo and Metohija” contains one paragraph concerning information about the disappearance of Mrs Milica Radunović and the killing of Mr Miloš Radunović. It states “[t]here is a suspicion that Milica Radunović was killed at her very doorstep and that her body was thrown into a well outside her house in the village of Dašinovac in the Dečan Municipality. Her husband was also killed, but his body was found immediately.”
6. The investigative file contains a document entitled “WCU Case Analysis Report”, dated 24 [November] 2002, affixed with MPU file no. 2002-00124. Under the heading labelled “Summary of the Crime”, the Report states “[t]his file is not included in the database. This file appears to be a collection of intelligence reports and associated information.” Under the heading labelled “Investigator Recommendation/Opinion”, the Report states “[t]his is not a criminal investigation case file. It has a case number (2002-00124) but this file is not in fact an investigation. The file contains various intelligence information. File should be submitted to intelligence. Intelligence should cross reference the information to ascertain if the information is useful to the various investigative units.”
7. The file also contains an internal memorandum dated 30 January 2003, entitled “Short evaluation of the allegations by the Serbian Prosecutors Office against Albanian individuals”, from the UNMIK CCIU to the UNMIK Police Director of Investigations. The memorandum states:

“[f]rom our unit, we have done an evaluation of the received information…Most of the information consists of very vague accusations against individuals. Most of the people and activities mentioned are already known for our unit…Some of the people are unknown, but the information…doesn’t give any new big inputs about their connections and acts after the war in Kosovo. However, when you try to puzzle intelligence information together, there will always be small pieces of information that can take you further in your knowledge about individuals, groups and other activities. Since this information is received from Serbia, we must of course evaluate it very carefully and try to find what might be true or false about the alleged accusations and activities of the Albanian individuals.”

1. The investigative file also contains a document labelled “War Crime Unit MPU Anti Mortem Investigation Report”, started on 17 March 2005 and completed on 22 March 2005, affixed with the WCIU file no. 0456/INV/05 and cross-referenced with MPU file no. 2002-000474. The Report lists Mrs Milica Radunović as the missing person. Under the heading labelled “Nature of Information”, the Report states (original grammar preserved) “[Mrs Milica Radunović] was disappeared on 24/04/1998. The case of [Mrs Milica Radunović] was reported to ICRC BELGRADE…and an MPU file opened on 21/05/2002. Under the heading labelled “Background of the Case”, the Report states “[Mrs Milica Radunović] was taken together with her husband [Mr Miloš Radunović] and six more villagers from Dasinovac village. After six month [Mr Miloš Radunović] and other were found dead and identified except [Mrs Milica Radunović].” Under the heading labelled “Further Investigation”, the Report states:

“The KLA took control of Dasinovac on 22 of April [1998]. Most Serbs fled the village the day before; only [S.R.] (64), [Mrs Milica Radunović] (59), her husband [Mr Miloš Radunović] (60) and the Markovic family remained. [Mrs Milica Radunović]’s son and daughter-in-law last saw [Mrs Milica Radunović] and [Mr Miloš Radunović] on 22 April when they came from Decani to take the elderly couple back with them. They were, however, unable to persuade [Mrs Milica Radunović] and [Mr Miloš Radunović] to leave and returned home the same day. They have had no news since then. Albanian friends of the family went to Dasinovac to look for [Mrs Milica Radunović] and [Mr Miloš Radunović] but with no success. We [contacted an OMPF employee] and she informed us that in one grave they found about 34 bodies. From those bodies they identified [Mr Miloš Radunović]. Other bodies’ still now is in the Orahovac morgue and waiting for DNA identification.” We didn’t find more information about [Mrs Milica Radunović] in any available database.”

1. The Report also states that the complainant was interviewed, but she didn’t get any further news about Mrs Milica Radunović. Under the heading labelled “Conclusion”, the Report states “[i]t’s impossible at this time to find any witness around the place event. This case should remain open pending within the WCU.” Attached to the Report are two other MPU printouts, one with no label and the other labelled MPU Report. Both printouts were printed on 18 March 2005 and contain basic details of Mrs Milica Radunović’s disappearance, as well as her personal details and ante-mortem description.
2. The investigative file contains an additional copy of the aforementioned WCU Case Analysis Report”, dated 24 [November] 2002, affixed with MPU file no. 2002-00124 (see § 38 above) which contains additional handwritten information from the UNMIK investigator reviewing the file, dated 4 January 2008. On that date, the UNMIK investigator added “file reviewed by [W]. I concur with the comments stated above [that the file should be submitted to intelligence and cross-referenced for useful information]” (see § 38 above).
3. The investigative file also contains a copy of a WCIU Case Analysis Review Report, dated 28 January 2008 and affixed with the file number 0126/INV/02. The Report lists the priority of case as being “low” and states that the current state of the case is “closed”; under the heading labelled “Reason”, the Report states “Negative Exhumation”. Under the heading labelled “Blood Sample Collection for DNA, the Report states “No information.”
4. Attached to the WCIU Case Analysis Review Report was a print-out, dated 28 January 2008, affixed with the file number 0126/INV/02 and cross-referenced to MPU file no. 2002-000470. The print-out gave an overview of the exhumation performed by OMPF in 2002 at the well in the village of Dashinoc/Dašinovac in Deçan/Dečani Municipality which did not result in the discovery of any mortal remains for Mrs Milica Radunović (see §§ 32-34 above).

*MPU and WCIU files in relation to Mr Miloš Radunović*

1. The first document in the investigative file related to Mr Miloš Radunović is an interoffice memorandum from CCIU to MPU, dated 3 November 1999. In the field labelled “Subject”, the memorandum states “Drowning in Radonicko lake”. The memorandum also states “[p]lease find attached the information received from the intelligence unit concerning the incidents at RADONICKO lake. The information states the names of three possible Serbian victims. MPU is in possession of a list of victims and is hereby requested to compare….To open a War Crimes investigation we need all gathered information and results of investigations that have been carried out.”
2. The next document in the MPU file is labelled “Gravesite Assessment Continuation Form”, affixed with the file no. 0045/INV/01 and dated 15 February 2002. The Form contains summaries of numerous email correspondences and other investigative developments related to the case from the first entry, dated 30 October 2001 until 15 February 2002. One entry dated 10 December 2001 is labelled “Email sent by MPU Belgrade Liaison Office”. Under the heading labelled “Source of Information”, it states “FRY authorities”. Under the heading labelled “Information”, it states “RADONJICKO JEZERO Mass Grave (1998). Mass killing was discovered on 8 September 1998 at the places GLODJANE and DONJE RATIS (municipality of Decane). Bodies were found in the canal, beside the canal and nearby the cattle farm.” Under the heading labelled “Search in the Area”, the Form states:

“[t]he search action started at 12:00 on 11/Sept/98. Complete area was searched with the presence of an Investigating Judge...at the search phase 1 at least 34 bodies were found and at the search phase 2 five more bodies were found. The total figure was 39 bodies discovered. Out of them 12 were identified.” Among the names that are listed is the name of Mr Miloš Radunović. Under the heading labelled “Cause of dead”, the Form states “[a]ll of these victims were killed- executed in a period from April 1998 till August 1998. There had been several executions of smaller groups of people each time on Ratis canal and other locations near the sites where the bodies were found. The dead of these people were described and proved as violent-multiple gunshot wounds…The region where the sites are is a stronghold of UCK.”

1. Under the heading labelled “Conclusion”, the Form states “to be requested from FRY the original documentation, i.e. the autopsy reports, the investigation and identification reports, attached photos, DNA samples and all other documentation related to the case. To be inquired from the ICTY their present knowledge about the Radonjicko lake case.”
2. There are numerous other documents in the file related to investigations regarding the unidentified mortal remains from the other victims from the “Radonjicko lake case” as well as a wider investigation into another tangentially related criminal investigation. However, these documents do not provide any further information with regard to the investigation into the abduction and killing of Mr Miloš Radunović.
3. The file also contains a death certificate issued by the UNMIK OMPF dated 5 October 2005 that indicates that Mr Miloš Radunović died prior to 5 October 2005 and states that his cause of death could not be ascertained.

*ICTY Proceedings*

1. The abduction and killing of Mr Miloš Radunović and disappearance of Mrs Milica Radunović was investigated by the ICTY, as a part of the proceedings in the case *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj* (IT-04-84).
2. The first indictment in this case was filed at the ICTY on 4 March 2005 (IT-04-84-I). This indictment concentrated on crimes allegedly committed by the KLA during the armed conflict in Kosovo, which were “closely related to that conflict in that the victims of those crimes, persons taking no active part in hostilities, were either Serb civilians or persons perceived to be collaborating with the Serbs or persons otherwise perceived to be not supporting the KLA.” In relation to Mr Miloš Radunović, the indictment states:

**COUNTS 11 and 12**

55. On or about 23 April 1998, Slobodan Radosevic, born on 8 October 1943, husband of Rosa Radosevic, and two neighbours, Milos Radunovic born on 19 February 1938, and his wife Milica Radunovic born in 1938, all Serbs, who had stayed in their homes in the village of Dasinovac, municipality of Decani, disappeared. KLA soldiers were rumoured locally to have abducted them. Subsequently a KLA communication appeared in a local Serbian newspaper and on local television news stating that the families of Slobodan Radosevic and Milos Radunovic should go to the roadside near Decani/Deçan to collect the bodies of these men. The families, being afraid, did not go to the site.

56. The remains of the bodies of Slobodan Radosevic and Milos Radunovic were recovered under a layer of soil by members of the Serbian Police on 12 September 1998 just north of Lake Radonjic/Radoniq on the road leading to the village of Dasinovac/Dashinoc, exactly where the KLA communication had stated. Although female remains and partly burned women’s clothing were discovered on the opposite side of the same road, the body of Milica Radunovic has not been identified. She is officially listed as missing. Thereby Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj committed:

Count 11: A CRIME AGAINST HUMANITY, Persecution (murder), punishable under Articles 5(h) and 7(1) of the Statute of the Tribunal; Alternatively, A CRIME AGAINST HUMANITY, Murder, punishable under Articles 5(a) and 7(1) of the Statute of the Tribunal;

Count 12: A VIOLATION OF THE LAWS OR CUSTOMS OF WAR, Murder, as recognised by Common Article 3(1)(a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal.

1. The amended indictments which were filed later did not have any substantive amendments or additions to the information in relation to Mr Miloš Radunović. However, although Mrs Milica Radunović is mentioned in the original indictment, she was not a part of the case at that time; she would be added to the case in the amended indictment in 2010 (see § 55 below).
2. The following is an excerpt from the ICTY Trial Chamber’s Judgment IT-04-84-T in the same case, delivered on 3 April 2008 (emphasis added):

**6.7 Murder of Slobodan Radošević and Miloš Radunović (Count 12)**

207. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Slobodan Radošević and Miloš Radunović in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from a number of witnesses, as well as forensic medical evidence.

208. Staniša Radošević, a Serbian from the village of Dašinovac/Dasinoc in Dečani/Deçan municipality testified that when he arrived at the family home in Dašinovac/Dasinoc on 22 April 1998, he told his father, Slobodan Radošević, about the abduction of Staniša’s mother and his friend, and his father gave him a gun. The witness informed his father that the KLA had set up checkpoints everywhere and that one could not move freely. His father told him that he would try to go to Dečani/Deçan through the woods after nightfall, whereupon the witness left his father in the house. This was the last time that the witness saw his father alive. The next morning, the witness’s friend Slaviša Marković told the witness that he had come from Dašinovac/Dasinoc, that he had heard a lot of gunfire around 7:00 the evening before, that there must have been an attack at the witness’s family home, and that Slobodan Radošević had probably been captured or killed. Another friend of the witness informed him that he had seen KLA soldiers taking Slobodan Radošević along with Miloš Radunović towards Požar/Pozhare in a car although the witness believed that they were travelling on from there to Glođane/Gllogjan. The friend could see that they had been beaten up. When the friend tried to stop the soldiers he was beaten. The friend later heard that Slobodan Radošević and Miloš Radunović had been killed, their bodies thrown by the road near what the witness called the “Linkun Put location”. Three or four months later the friend went there to put earth over the bodies. On 9 September 1998, Zoran Nikić and Vule Mircić, two policemen from Dečani/Deçan, informed the witness that they had found the body of Slobodan Radošević by the side of the road near the village of Dašinovac/Dasinoc on the “Ninka Road”.

209. Witness 60 testified that he last saw Slobodan Radošević alive around 15-16 April 1998 and Miloš Radunović alive close to 4:00 p.m. on 22 April 1998, when he left the witness’s house to bike to Radošević’s house. On 23 April 1998, Xhevdet Sadikaj informed the witness that on the previous day certain men “from Glođane/Gllogjan” had caught Miloš Radunović as he biked past Sadikaj’s house. Sadikaj further informed the witness that they drove to Miloš Radunović’s house, showed him weapons they had found in his house, and headed to Slobodan Radošević’s house to catch him, too. About ten to fifteen minutes after Miloš Radunović left the witness’s house, the witness, who was in the yard outside his house, heard lots of shooting from different weapons from the direction of Slobodan Radošević’s house, which lasted approximately ten to fifteen minutes. Sadikaj informed the witness that ten to fifteen minutes later he was at the juncture between the road to Dečani/Deçan and the road to Glođane/Gllogjan where he saw Miloš Radunović, his arm wounded, and Slobodan Radošević being taken towards Glođane/Gllogjan by the men from Glođane/Gllogjan. The witness understood Sadikaj to be a member of the KLA.

 210. Quash Sadikaj, a Kosovar Albanian from the village of Dašinovac/Dasinoc in Dečani/Deçan municipality, testified that all the Serbs in the village were armed in 1998. He also testified that Miloš Radunović and Slobodan Radošević, two Serbs from the village, were members of the reserve police and possessed several weapons. Slobodan Radošević kept his in the bunkers that he had built at the front and back of his house. At some point in time the trees close to the witness’s house were burnt down and the witness overheard Miloš Radunović and Slobodan Radošević saying that this was now “clear territory” which the witness understood to mean that there was a clear view for shooting. One day the witness was in his courtyard and saw five or six armed men, three of which were wearing VJ uniforms, next to a white car about 200-300 metres away. The men were talking to Miloš Radunović in Albanian and Serbian. They first walked towards Miloš Radunović’s house, then returned and headed for Slobodan Radošević’s house which was situated 800 metres from the witness’s house. More than half an hour later the witness heard five to six shots, over the course of three or four minutes, from the direction of Slobodan Radošević’s house. The witness described what he heard as an exchange of fire. The witness also heard artillery fire throughout the following night from the direction of Dečani/Deçan. Two or three days later someone told people in the witness’s village, although not the witness himself, that he had seen two corpses about two kilometres away, in the territory of Kodralija/Kodrali, though he did not know who they were. A few weeks later, the witness heard on television that the bodies were those of Slobodan Radošević and Miloš Radunović.

211. Miloica Vlahović testified that on 22 April 1998, in Đakovica/Gjakovë, he heard from policemen that Miloš Radunović and Slobodan Radošević were arrested by Albanians, which the witness understood to mean the KLA.

 212. Rrustem Tetaj testified that he heard two different versions about what had happened to two Serbs called Miloš and Slobodan from Dašinovac/Dasinoc in Dečani/Deçan municipality in late April or the beginning of May 1998. The first one, which the witness heard from Deli Lekaj, the KLA commander of Ljumbarda/Lumbardh, was that Lekaj and his soldiers (Haxh Lekaj, Zimer Ukaj, Sami Lekaj, and others), armed and dressed in KLA uniforms, went to the village of Dašinovac/Dasinoc and entered Slobodan’s house in order to loot it. Deli Lekaj was injured when they were shot at upon entering the house, and Slobodan was killed when the KLA soldiers shot back. The second version had it that Deli Lekaj’s group went to the house of Slobodan, who in turn went to get Miloš, who at the time was visiting an Albanian neighbour. Slobodan and Miloš then went to Slobodan’s house where Slobodan shot Deli Lekaj. As a result, the group apprehended Slobodan and Miloš and brought them to Glođane/Gllogjan. When Toger heard that Slobodan had shot Lekaj in the leg he pulled out his pistol and shot Slobodan in the leg. Haradinaj then ordered the two men to be taken to Prilep/Prelep, in Dečani/Deçan municipality, where they could join the Serbian forces. However, since the KLA in Prilep/Prelep feared that the Serbian MUP and VJ would retaliate when they found that a Serbian had been shot they brought the men back to Dašinovac/Dasinoc, where their bodies were found in front of their houses two days later. Tetaj did not remember who he had heard the second version from and had no further information that could confirm it.

213. Ismet Kadrijaj testified that in April 1998 he accompanied Deli Lekaj to the village of Dašinovac/Dashinoc, in Dečani/Deçan municipality. The witness was wearing civilian clothes and Deli Lekaj was wearing a KLA camouflage uniform; both men were armed with Kalashnikovs. Upon noticing that the checkpoint at Dašinovac/Dashinoc, on the Požar/Pozhare- Dašinovac/Dashinoc road, was unmanned, Deli Lekaj stopped and exited the vehicle three or four metres from the checkpoint. At this moment the witness heard gun-fire. The witness saw that Deli Lekaj had been shot in the rear upper leg…The witness left immediately, driving Deli Lekaj to Požar/Pozhare, in Dečani/Deçan municipality, where Deli Lekaj received medical attention.

214. Zvonko Marković testified that in the summer of 1998, he and seven other policemen were led by a young Albanian man to a place called Vidište at the entrance to Dašinovac/Dasinoc, in Dečani/Deçan municipality. There they discovered the bodies of Miloš Radunović and Slobodan Radošević by the road leading to Dašinovac/Dasinoc. Following this discovery, what the witness believed to be uniformed forensic technicians arrived at the site and conducted an on-site investigation. The witness had heard that Miloš Radunović and Slobodan Radošević were killed by the “terrorists”.

215. According to information gathered by a human rights monitor for the HLC, Marijana Anđelković, in interviews with Radunović’s daughter-in-law and other villagers, on 22 April 1998 the KLA took control of Dašinovac/Dashinoc village, in Dečani/Deçan municipality; most of the Serbian inhabitants had fled the village the day before. Slobodan Radošević, Milica and Miloš Radunović, and the Marković family remained. Rosa and Staniša Radošević tried to return to collect Slobodan Radošević the next day but were stopped by the KLA at a checkpoint in Požar/Pozhare, in Dečani/Deçan municipality; from there they were taken to KLA headquarters in Glođane/Gllogjan, in Dečani/Deçan municipality, where Staniša Radošević was physically abused by KLA members. They were released, but they were not allowed to continue to Dašinovac/Dashinoc.

216. On 6 September 1998, Ljubiša Radunović, son of Miloš and Milica Radunović, filed a report with the Đakovica/Gjakovë MUP alleging that around 3:00 p.m., on 24 April 1998, unidentified Albanians entered his family house and took his parents.

217. The Trial Chamber has also received forensic medical evidence with regard to Slobodan Radošević (remains labelled “D-2”) and Miloš Radunović (remains labelled “D-1” and certain other remains). Dušan Dunjić testified that upon the forensic team’s arrival on 11 September 1998, Judge Gojković handed the team a large plastic bag, containing human bones, clothing and other items. Judge Gojković informed the witness that the MUP had found the remains somewhere in or near the village of Dašinovac/Dashinoc, in Dečani/Deçan municipality. The investigators removed the remains from Dašinovac/Dashinoc, because the area was too dangerous for the forensic team to work. The team initially labelled the remains and some of the items from the bag D-1. The remains consisted of bone fragments belonging to at least three individuals, so the team labelled them D-1a, D-1b and D-1c. Later, the team relabelled them D-1, D-2 and D-3. ICMP DNA analysis concluded that the remains labelled D-1 are those of Miloš Radunović. An autopsy conducted on the remains on 17 October 2005 identified one of the bones found as one fragment of the left side of the frontal bone. The cause of death was unascertained. ICMP DNA analysis also concluded that the remains labelled D-2 are those of Slobodan Radošević. An autopsy conducted on the remains on 8 December 2003 found a completely skeletonized part of the left parietal bone with a gunshot injury. The autopsy concluded that the cause of death was a gunshot injury to the head. Later ICMP DNA analysis concluded that certain other human remains were also likely to belong to Slobodan Radošević. An autopsy conducted on those remains found a defect in the leg consistent with a gunshot wound. Though not immediately fatal, if left untreated the victim could have died from blood loss and other complications.

218. In evaluating the evidence in relation to Count 12, the Trial Chamber faced considerable problems as a result of the low level of reliability and credibility of some of the testimonies. Similarly, the Trial Chamber has serious doubts concerning the candour of some of these testimonies. This doubt stems from the evasive reactions of some of the witnesses when confronted with their possible involvement in police activities and in the events leading to the death of Slobodan Radošević and Miloš Radunović. Moreover, the evidence contains inconsistencies surrounding the circumstances under which Slobodan Radošević and Miloš Radunović were last seen. As a result, the evidence fails to provide a clear picture as to what happened to Slobodan Radošević and Miloš Radunović.

219. Slobodan Radošević and Miloš Radunović were from Dašinovac/Dashinoc. When most Serbs left the village on 21 April 1998, they were among those who stayed. On 22 April 1998, the KLA took control of the village. Quash Sadikaj testified that on an unspecified day he saw five or six armed men, three in VJ uniforms, talking to Miloš Radunović in the village. The witness saw the men walking towards Slobodan Radošević’s house. More than half an hour later he heard five or six shots, in what he described as an exchange of fire coming from the direction of that house. Witness 60 testified that Xhevdet Sadikaj had told him that on 22 April 1998 men “from Glođane/Gllogjan” had taken Miloš Radunović first to his house, confronted him with the weapons they had found in his house, and then headed to Slobodan Radošević’s house. Witness 60, who was in Dašinovac/Dashinoc on this day, testified that he heard an exchange of fire lasting approximately 10 to 15 minutes and coming from the direction of Slobodan Radošević’s house. Staniša Radošević testified that his friend, Slaviša Marković, had told him that he had heard “a lot of gunfire” in the village on the evening of 22 April 1998. Rrustem Tetaj testified that he had been told by Deli Lekaj, the KLA commander of Ljumbarda/Lumbardh, that Lekaj had been injured in an exchange of fire, and that Slobodan Radošević had been killed. Deli Lekaj had told Rrustem Tetaj that they had gone to Slobodan Radošević’s house to loot it. Upon entering the house they were shot at, Deli Lekaj was injured, and Slobodan Radošević was killed when the KLA soldiers fired back. Ismet Kadrijaj testified that Deli Lekaj was shot in the leg in Dašinovac/Dashinoc in April 1998, although he does not link this event to the killing of Slobodan Radošević. Rrustem Tetaj also testified that he had heard another version of what happened to the two men, involving both Ramush Haradinaj and Idriz Balaj. Although the forensic medical evidence provided some objective support for this version, in the light of the fact that Tetaj failed to provide a source for it, the Trial Chamber will not rely on the testimony of Rrustem Tetaj in this respect.

220. The Trial Chamber has heard hearsay evidence of the two men being taken from their village. Staniša Radošević testified that a friend had told him that he had seen KLA soldiers taking the two men towards Požar/Pozhare in a car. This friend also told him that the two men had been beaten. Witness 60 testified that Xhevdet Sadikaj had told him that he had seen men from Glođane/Gllogjan taking the two men towards Glođane/Gllogjan and that Miloš Radunović was wounded in the arm. However, none of the witnesses who were present in Dašinovac/Dashinoc on 22 April testified to having seen the two men being taken away.

221. In September 1998, the bodies of the two men were found by a road near Dašinovac/Dashinoc. According to the forensic medical evidence, the cause of death for Slobodan Radošević was a gunshot to the head while the cause of death for Miloš Radunović could not be established. The Trial Chamber concludes that the men seen with Miloš Radunović on 22 April 1998 were KLA soldiers or affiliated with the KLA. However, based on the evidence, the Trial Chamber cannot draw any conclusions about why these men approached Slobodan Radošević and Miloš Radunović on that day or about the circumstances under which the two Serb men were killed. The Trial Chamber can therefore not conclude beyond a reasonable doubt that the two men were murdered, or exclude that the two men took an active part in the hostilities at the time of their death. The Trial Chamber concludes that all three Accused should be acquitted of Count 12.

1. Two of the three accused, Mr Ramush Haradinaj and Mr Idriz Balaj, were found not guilty on all counts of the indictment. The third accused, Mr Lahi Brahimaj was found guilty in torture and cruel treatment, but not in relation to Mr Miloš Radunović.
2. The Prosecutor appealed this judgement. Subsequently, on 19 July 2010, the ICTY Appeals Chamber partially granted the Prosecutor’s appeal, including in the part related to Mr Miloš Radunović, and ordered all three accused to be retried on the relevant counts. Furthermore, the appeal was amended to include the kidnapping of Mrs Milica Radunović.
3. On 29 November 2012, The Trial Chamber re-examined the evidence presented by the Prosecutor and issued its retrial judgment (IT-04-84*bis*-T), in which it came to the following conclusion:

**(c) Conclusion**

203. According to hearsay evidence of Witness 28 after the KLA had taken control of Dashinoc/Dašinovac in Deçan/Dečani municipality on 21 April 1998, most Kosovo Serbs vacated their homes, but Slobodan Radošević and Miloš Radunović remained in their village together with other villagers, namely Milica Radunović and the Marković family. On 22 April 1998, Staniša Radošević, Slobodan Radošević’s son, was not allowed to return to Dashinoc/Dašinovac in order to search for his father.

204. The Chamber received other hearsay evidence from various sources that the persons who stayed behind in Dashinoc/Dašinovac referred to in the previous paragraph went missing. Nebojša Avramović, a Serbian crime technician, personally spoke to the families who reported Slobodan Radošević and Miloš Radunović missing because their sons were members of the MUP. Zoran Stijović, an RDB official, gave evidence based on information from an RDB operative from Deçan/Dečani, Vlado Mirčič, that Slobodan Radošević, Miloš Radunović and the latter’s wife were killed. He did not provide support for this assertion.

205. Rrustem Tetaj gave evidence that he heard “two different stories” concerning the disappearance of two Kosovo Serbs, “Miloš” and “Slobodan”, from the village of Dashinoc/Dašinovac. Deli Lekaj, KLA commander in the village of Lumbardh/Ljumbarda in Deçan/Dečani municipality, told Rrustem Tetaj that he, Deli Lekaj, and a number of KLA soldiers, entered the house of Slobodan in Dashinoc/Dašinovac to loot it, believing that the house was empty. An exchange of fire occurred in the house and Slobodan was killed. Rrustem Tetaj later saw that Deli Lekaj was wounded, allegedly by Slobodan.

206. The other version Rrustem Tetaj said to have heard involved the same KLA soldiers approaching the same house. A Kosovo Serb named Slobodan, who had seen the soldiers, asked another Kosovo Serb named Miloš to accompany him to the house. Slobodan shot and wounded a KLA soldier and both Kosovo Serbs were subsequently taken to Gllogjan/Gloñane to Haradinaj and Balaj. There Balaj shot Slobodan in the leg upon hearing that a KLA soldier was wounded. Haradinaj ordered that the two men be taken to Prilep in Deçan/Dečani municipality to join their own forces. The KLA in Prilep, fearing retaliation for the wounding of Slobodan, took the two men back to Dashinoc/Dašinovac. The witness heard people say that the two Kosovo Serb men were found dead two days later in front of their houses in Dashinoc/Dašinovac.

207. The Chamber also received in evidence statements to the Serbian police attributed to a captured KLA member, Bekim Kalimashi. These statements refer to Bekim Kalimashi’s involvement in the kidnapping by the KLA of a group of persons from Dashinoc/Dašinovac, who, according to the statements, were all Kosovo Serbs from the same area. According to the statement attributed to Bekim Kalimashi, the kidnapped persons were brought to Jabllanicë/Jablanica and detained, and Kalimashi is reported to have heard that they were maltreated and killed.

208. In order to assess the evidentiary value of the alleged statements of Bekim Kalimashi the Chamber looked at the circumstances in which these statements were taken. These statements and others were said to have been given to the SUP Gjakovë/Ðakovica by persons who were among a group of 10 to 12 Kosovo Albanians arrested by the police on 3 September 1998 in the village of Kodrali/Kodralija. Radovan Zlatković of the SUP Gjakovë/Ðakovica gave evidence that two police officers conducted interviews with Bekim Kalimashi and Zenel Alija in the Albanian language upon his orders. He gave evidence that he was present during the entire time of the interviews, which lasted two or three days, but he also gave evidence that he was not there all the time. None of the persons whose names appear on the statements to the SUP Gjakovë/Ðakovica gave evidence before the Chamber. At the time of the interviews one of the persons taking the statements, Rade Vlahović, believed that his parents had been abducted by the KLA. Radovan Zlatković gave evidence that he instructed the police officers to ask questions in Albanian and that he took notes of the responses translated by them. However, he also stated that he himself did not take notes, that the men conducting the interviews took the notes, and that he worked on the case on the basis of those notes. The statements are recorded in the Serbian language, even though the interviews were conducted in Albanian as Bekim Kalimashi did not speak the Serbian language and Zenel Alija spoke “little” Serbian. One of the statements attributed to Bekim Kalimashi is not signed. The Chamber will not consider this unsigned statement further.

209. The Chamber also received in evidence official notes of interviews of Zenel Alija and Lul (Ljulj, Luli) Musaj, who were also in the group of those arrested on 3 September 1998, with RDB officials. Bogdan Tomać gave evidence that the interviews were conducted on 7 September 1998. He also stated that he and his colleague used the opportunity provided by law to speak to the interviewees for three days, namely 7, 9, and 10 September 1998. The official notes prepared after these interviews, however, refer only to interviews conducted with Zenel Alija and Lul (Ljulj, Luli) Musaj, respectively, on 9 and 10 and on 8 and 9 September 1998.

210.The issues highlighted above raise concerns about the reliability of these statements and official notes. The evidence also includes the following statements: a statement given by Lul (Ljulj, Luli) Musaj on 9 November 1999 to the Commission on War Crimes in Deçan/Dečani indicating that on 5 September 1998 he was beaten in the SUP Gjakovë/Ðakovica and that the beatings continued for 10 days, another statement of Lul (Ljulj, Luli) Musaj, given in July 2006, providing more information about the same events, and a statement of Zenel Alija given in May 2006 indicating that he and others, including Bekim Kalimashi, were ill-treated during their arrest on 3 September 1998 and that Zenel Alija was tortured and forced to sign statements during his subsequent detention in the SUP Gjakovë/Ðakovica. These allegations, together with the concerns highlighted in the preceding paragraphs, raise serious questions about the reliability of the statements of Bekim Kalimashi and Zenel Alija to the SUP Gjakovë/Ðakovica and the official notes of the interviews of Zenel Alija and Lul (Ljulj, Luli) Musaj. In the circumstances, the Chamber attaches no weight to the information contained in these statements and in the official notes of the interviews.

211. Turning again to the incident involving Slobodan Radošević and Miloš Radunović, Staniša Radošević, son of Slobodan Radošević, provided several accounts of what he heard may have happened to his father. He heard from an unnamed friend that this friend left his house when KLA members in uniform in two cars drove by, transporting Slobodan Radošević and Miloš Radunović. On the evidence of Staniša Radošević, the friend tried to stop the KLA members from taking these two individuals away and was beaten. The friend’s account as conveyed by Staniša Radošević is unclear as to whether the friend could see whether the two individuals had been beaten. On the evidence of Staniša Radošević, the KLA members drove on with the two men in the direction of Pozhar/Požar. Staniša Radošević was also told by the friend that he had heard a rumour that Slobodan Radošević and Miloš Radunović had been killed later and thrown by the road near the “Linkin Put” location. According to Staniša Radošević, when the friend went there to confirm this, he found the bodies already decomposed and threw some soil over them with a shovel he had brought.

212. Staniša Radošević also gave evidence about the account of another friend, Slavisa Marković. Staniša Radošević testified that one day after his mistreatment, Slavisa Marković came from Dashinoc/Dašinovac and told him that his father, Slobodan Radošević, had “probably” been captured and killed. Slavisa Marković told Staniša Radošević that there had been “a lot of gun-fire” around 1900 or 1930 hours, which Staniša Radošević attributed to an attack on his father’s house. On the evidence of Staniša Radošević, Slavisa Marković attributed it to the KLA “terrorists”. Staniša Radošević believed that nobody else could have done it, as the only persons allowed into the area were the KLA.

213. Staniša Radošević also heard various rumours about his father’s fate. According to one of these rumours, Slobodan Radošević and Miloš Radunović were brought to the village of Prilep and were wounded at some point. The rumour went on to say that the people of the village of Prilep did not want to let them stay there for fear that they would be blamed for what happened. The two men were then taken to Gllogjan/Gloñane, and either died there or in the village of Dashinoc/Dašinovac. According to another rumour they had been questioned and wounded in Gllogjan/Gloñane, and were then taken to Prilep in Deçan/Dečani municipality and finally to Dashinoc/Dašinovac, where they were killed or left to bleed to death. Staniša Radošević added that he had heard yet another rumour that Deli Lekaj, a KLA member in Gllogjan/Gloñane, had participated in the arrest and perhaps in the murder of his father.

214.The Chamber notes that these accounts about the fate of the persons last seen in Dashinoc/Dašinovac referred to above are hearsay, in large parts multiple and unsourced. They are, therefore, not reliable. Some of the persons whose accounts were discussed above such as Deli Lekaj might have had an interest in minimizing or misrepresenting their own involvement in the events. No direct evidence of what occurred with the missing persons since they stayed behind in Dashinoc/Dašinovac, was tendered by the Prosecution. The Chamber further notes that the various accounts discussed differ considerably in parts and contradict one another. The evidence does not provide a sufficient basis for a finding on the circumstances in which these persons died. With regard to Slobodan Radošević, the Chamber also notes the evidence of his son, Staniša Radošević, who recalled that Slobodan Radošević wore a camouflage jacket and was in possession of a hunting rifle on the day he last saw him. This raises at least reasonable doubt as to whether Slobodan Radošević was taking active part in the hostilities when he died.

215. Serbian investigations attributed the remains found near Dashinoc/Dašinovac in Deçan/Dečani municipality to Slobodan Radošević and Miloš Radunović. A Serbian crime scene investigation report provides details about the results of the autopsies conducted on the bodies found at the lake and the Dashinoc/Dašinovac exhumation sites. According to this report, all bodies found showed fractures and other signs of maltreatment and the cause of death was ascertained to be shots from firearms. Miloš Radunović’s ID card was also found at the Dashinoc/Dašinovac exhumation site, together with clothes. The remains attributed by the above-mentioned Serbian investigation to the two mentioned individuals consist of four fragments of flat skull bones which were determined “by anthropological examination” to belong to at least three different persons, and of other bones or bone fragments. On the basis of the tendered evidence, as discussed elsewhere, the Chamber does not accept that it has been proved beyond reasonable doubt that these remains were in fact those of Slobodan Radošević and Miloš Radunović.

216. The Chamber notes that no further evidence was received on Milica Radunović and the Marković family. In sum, the evidence received is insufficient or insufficiently reliable to establish the circumstances of the death of the persons who went missing from Dashinoc/Dašinovac or to establish the identity of the perpetrators or any KLA involvement.

1. On the basis of having insufficient evidence, the Trial Panel found all three accused not guilty on all counts of the last indictment and ordered their release from detention (IT-04-84*bis*-T). The ICTY procedure on the case is completed.
2. **THE COMPLAINT**
3. The complainant complains about UNMIK’s alleged failure to properly investigate the disappearance of Mrs Milica Radunović and the abduction and killing of Mr Miloš Radunović. In this regard the Panel deems that the complainant invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
4. Regarding the disappearance of Mrs Milica Radunović, the complainant also complains about the mental pain and suffering allegedly caused to herself by this situation. In this regard, she relies on Article 3 of the ECHR.
5. **THE LAW**
6. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
7. 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.
8. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
9. The Panel notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, [the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf), the Convention on the Rights of the Child.
10. 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.
11. 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.
12. 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**
13. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the disappearance of Mrs Milica Radunović and the abduction and killing of Mr Miloš Radunović.
14. In his comments on the merits of the complaint, the SRSG does not dispute that UNMIK had a responsibility to conduct an effective investigation into the disappearance of Mrs Milica Radunović and the abduction and killing of Mr Miloš Radunović**,** in line with its general obligation to secure the effective implementation of the domestic laws which protect the right to life, given to it by UN Security Council Resolution 1244 (1999) (see § 13 above) and further defined by UNMIK Regulation No. 1999/1 *On the Authority of the Interim Administration in Kosovo* and subsequently, UNMIK Regulation 1999/24 *On the Law Applicable in Kosovo,* and Article 2 of the ECHR.
15. Accepting that Mrs Milica Radunović and Mr Miloš Radunović disappeared in life-threatening circumstances, the SRSG does not dispute UNMIK’s responsibility to conduct an investigation into his case under Article 2 of the ECHR, procedural part. He argues that, in general, when considering whether UNMIK has satisfied its procedural obligations under Article 2 of the ECHR, the Panel must take into consideration the special circumstances in Kosovo at the time.
16. The SRSG considers that the obligation is two-fold, including an obligation to determine through investigation the fate and/or whereabouts of the dead person; and an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person.
17. The SRSG notes that “the disappearance of Ms. Milica Radunović and Mr. Miloš Radunović occurred at the outset of the Kosovo conflict. In this regard, it should also be noted that United Nations Security Council resolution 1244 (1999), which established UNMIK and KFOR as an international presence in Kosovo, was adopted on 11 June 1999, almost fourteen months after the disappearance of Ms. Milica Radunović and Mr. Miloš Radunović. From 23 April 1998 to 11 June 1999, Serbian authorities were in charge of Kosovo, and were unable to obtain any information on [the] fate and whereabouts of Ms. Milica Radunović.”
18. The SRSG adds that in June 1999, “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.”
19. The SRSG argues that in its case-law on Article 2, the European Court of Human Rights has stated that due consideration shall be given to the difficulties inherent to post-conflict situations and the problems limiting the ability of investigating authorities when conducting investigations in such cases. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court in the case *Palić v. Bosnia and Herzegovina,* stating at paragraph 70:

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

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

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

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

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to crimes. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and cultures, with limited support from the still developing Kosovo Police.
2. The SRSG states that UNMIK international police officers had to adjust to conducting investigations in a foreign territory and cultures, 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, “[s]uch constraints inhibited the ability of an institution such as UNMIK Police to conduct all investigations in a manner, when viewed systemically, that may be demonstrated, or at least expected, in other States with more established institutions and without the surge in cases of this nature associated with a post-conflict situation.”
3. With regard to the investigations of the disappearance of Mrs Milica Radunović and the abduction and killing of Mr Miloš Radunović, the SRSG states that “[b]ased on the reference number given by MPU for the disappearances of Ms. Milica Radunović and Mr Miloš Radunović, it can be asserted that the UNMIK OMPF and MPU became aware of their disappearances on 21 May 2002. He also notes that UNMIK OMPF and MPU contacted the family members of Mrs Milica Radunović and Mr Miloš Radunović in order to get more information about their disappearance and any indication that could lead to finding Ms. Milica Radunović, but no such information was available. He also notes that “it may not be concluded beyond any reasonable doubt whether Ms. Milica Radunović is still alive or not.”
4. The SRSG continues that “it can be asserted that information in the instant cases was investigated thoroughly and eventually the cases were tried before the International Criminal Tribunal for the former Yugoslavia (ICTY).” He notes that “UNMIK Police did open and pursue an investigation into the whereabouts of Ms. Milica Radunović and Mr. Miloš Radunović. The abduction and killing of Mr. Miloš Radunović is one of the cases that were investigated thoroughly and even tried before ICTY and the judgment of the case No. IT-04-84-T was rendered on the case on 3 April 2008 and retrial judgment…was issued on 29 November 2012. The legal proceedings in this case were initiated before ICTY on 10 March 2005.”
5. The SRSG also notes that “[b]y comparison between the copy of the case file compiled by UNMIK OMPF and the file under ICTY case No. IT-04-84-T, it appears that the former contains a small part of the whole investigation process in the disappearance of Ms. Milica Radunović and Mr. Miloš Radunović.” The SRSG describes the specific findings by the ICTY regarding Mrs Milica Radunović and Mr Miloš Radunović, and then quotes from the HRAP case no. 245/09 *Remištar*, which also involved victims who had investigations by UNMIK taken up by the ICTY. Specifically, the SRSG notes that in *Remištar*, concerning the ICTY’s overall primacy jurisdiction, the Panel stated that “during the period under the Panel’s jurisdiction, UNMIK’s responsibility with respect to all aspects of the procedural obligation under Article 2 of the ECHR was made subject to the primacy of the jurisdiction of the ICTY.”
6. The SRSG subsequently argues that “[s]imilarly, in the instant case, by adjudicating the kidnapping of Ms. Milica Radunović and Mr. Miloš Radunović before ICTY in the case no. IT-04-84, *Haradinaj et al,* UNMIK’s responsibility with respect to Article 2 of the ECHR was made subject to the primacy of the ICTY; therefore there have been no violations under Article 2 of the ECHR.”
	1. **The Panel’s assessment**
7. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR in that UNMIK Police did not conduct an effective investigation into the disappearance of Mrs Milica Radunović and the abduction and killing of Mr Miloš Radunović.
8. *Submission of relevant files*
9. The SRSG observes that all available files regarding the investigation have been presented to the Panel. On 3 July 2015, UNMIK confirmed to the Panel that the disclosure may be considered complete (see § 10 above). Additional evidence of the involvement of the ICTY in the investigation into the disappearance of Mrs Milica Radunović and the abduction and killing of Mr Miloš Radunović was obtained by the Panel from the ICTY webpage.
10. 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).
11. 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 likewise notes that UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
12. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the 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).
13. *General principles concerning the obligation to conduct an effective investigation under Article 2*
14. 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.
15. 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).
16. 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 § 53 above, at § 136).
17. 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).
18. 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).
19. 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 § 89 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).
20. 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).
21. Specifically with regard to persons disappeared and later found dead, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that “the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 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 § 92 above, at § 64).
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 § 91 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 91 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 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 v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 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).
24. *Applicability of Article 2 to the Kosovo context*
25. The Panel is conscious of the fact that Mrs Milica Radunović was disappeared and the abduction and killing of Mr Miloš Radunović occurred almost a year prior to the deployment of UNMIK in Kosovo, during the armed conflict, when crime, violence and insecurity were rife.
26. 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.
27. 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.
28. 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).
29. 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 § 92 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 § 96 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 § 91 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 91 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
30. 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 § 89 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 § 91 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
31. 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 § 88 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).
32. 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 § 19 above).
33. 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 § 92 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
34. 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.
35. 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.
36. *Compliance with Article 2 in the present case*
37. Turning to the particulars of this case, the Panel recalls that in October 2001, UNMIK was made aware of the disappearance of Mrs Milica Radunović, as her name was included in the list of missing persons forwarded to UNMIK by the ICRC (see § 26 above). Concerning Mr Miloš Radunović, the Panel notes that UNMIK became aware of his abduction and killing no later than 10 December 2001, when the MPU Belgrade Liaison Office forwarded this information to UNMIK Police from “FRY authorities” (see § 46 above). In 2002 and 2003, the information related to this case was entered in the UNMIK Police database (see §§ 32-39, 46-47 above). However, most of those investigative activities, except a case review in 2008 (see §§ 43 - 44 above), lay outside of the Panel’s temporal jurisdiction (see § 65 above).
38. Coming to the period within the Panel’s jurisdiction, in this particular case, it is clear that the the abduction and killing of Mr Miloš Radunović and the disappearance of Mrs Milica Radunović were, at this stage, the subjects of the ICTY case no. IT-04-84, *Haradinaj et al* (see § 50 - 57 above). The first indictment in this case had been filed in March 2005. However, this process did not lead to the identification and punishment of the perpetrator(s), as after the re-trial, on 29 November 2012, the Trial panel pronounced all the accused not guilty with regard to the alleged crimes, including the allegations of instigation, ordering and planning the murder of Mr Miloš Radunović (see § 57 above).
39. As an outset, the Panel stresses that it does not dispute the ICTY’s overall primacy jurisdiction to investigate any crime within its jurisdiction committed in the territory of the former Yugoslavia, due to its recognised international status under the UN Security Council’s Resolution 827 (1993). However, the Panel considers that the aspect that still needs to be examined from the perspective of the procedural obligation under Article 2 of the ECHR is whether any obligation under this Article, besides cooperation and provision of assistance to the ICTY, remained with UNMIK during the period of the Panel’s jurisdiction.
40. In this respect, the Panel recalls that, shortly after the establishment of UNMIK, while commenting on the investigation of the alleged crimes in Kosovo, the ICTY Prosecutor clearly stated that the ICTY had “neither the mandate, nor the resources, to function as the primary investigative and prosecutorial agency for all criminal acts committed on the territory of Kosovo. The investigation and prosecution of offences, which may fall outside the scope of the jurisdiction described above is properly the responsibility of UNMIK, through UNCivPol and the newly formed civilian police in Kosovo, assisted by KFOR. To ensure that the OTP ICTY and the agencies just mentioned are operating within their proper spheres, it will be helpful for an effective liaison to be maintained between them and the OTP. This should enable the Prosecutor to be kept informed about the nature and status of investigations being conducted by UNMIK (UNCivPol and the civilian police force), assisted by KFOR, into matters that may potentially have a relationship to crimes within the purview of the ICTY.” In the same statement, the ICTY Prosecutor reiterated that “the judicial authorities in Kosovo have the competence to judge those accused of crimes of the sort that come within the jurisdiction of the International Tribunal. In appropriate cases, which must be determined on a case by case basis, it is open to the International Tribunal to request national courts to defer to its competence, in accordance with the Statute of the Tribunal and its and its Rules of Procedure and Evidence.”[[8]](#footnote-8)
41. In the Panel’s view, the “primacy” of the ICTY’s jurisdiction is not absolute. Indeed, Rules 8 - 10 of the ICTY’s Rules of Procedure and Evidence [RoP] set forth the conditions for its right to take over investigations and establish the formal procedures to be followed. Rule 8 of the ICTY RoP states: “Where it appears to the Prosecutor that a crime within the jurisdiction of the Tribunal is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, the Prosecutor may request the State to forward all relevant information in that respect, and the State shall transmit such information to the Prosecutor forthwith in accordance with Article 29 of the Statute.” Rules 9 and 10 clarify that when the conditions are met, upon the Prosecutor’s request, the responsible Trial Chamber may formally request the relevant national court to defer such proceedings to the competence of the Tribunal (see HRAP *Remištar*, case no. 245/09, opinion of 17 October 2014, §§ 105-106).
42. The Panel is convinced that a formal request for information and cooperation or a request for deferral of proceedings must have been presented by the ICTY to national authorities. Thus, the ICTY must have presented such a request to UNMIK, before taking over the case, which would have been formally reflected in UNMIK’s documentation. This would, *first*, justify the lack of UNMIK’s authorities’ action with regard to particular investigations, and, *second*, it would enable future tracking and retrieving of the investigative documents and evidence by national authorities, when needed.
43. However, the investigative file made available to the Panel by UNMIK has no indication whatsoever of any ICTY involvement at any stage of the investigation by the UNMIK Police, with the exception of one possible discussion of making an inquiry to the ICTY about the case in 2002 (see § 47 above). Moreover, even in 2008, when the file was reviewed, the UNMIK Police WCIU, which was the main unit handling all war crimes investigations in Kosovo, appeared not to be aware of the existing ICTY proceedings. Notwithstanding, in its submission on the merits of these complaints, UNMIK in essence attributed the lack of the UNMIK Police investigative action to the ICTY investigation (see §§ 80-82 above).
44. The Panel notes these facts with great concern, as it appears that UNMIK’s investigative files might have been taken by the ICTY, without any formal request from the latter and without even any trace of such action. If this is the situation, it could seriously affect the possibility of tracking the documents and evidence in the case, as well as ensuring that those are the originals. Without a proper chain of custody of the investigative files, any future criminal proceedings, and subsequently the rights of interested parties, might be affected.
45. The Panel is likewise aware of the fact that, since its establishment, the ICTY has had a number of field offices in the former Yugoslavia, which were “originally set up as outposts for the [OTP] and were located in Belgrade, Sarajevo, Zagreb, Pristina, Banja Luka and Skopje. … In early 2000, a Registry component was added to the field offices of Sarajevo, Belgrade, Zagreb and Pristina, primarily to perform outreach and public information functions. The [OTP] withdrew its presence from the Pristina office in 2006 and from the Zagreb office in 2010.”[[9]](#footnote-9) Subsequently, on 31 December 2012, the ICTY OTP field office in Prishtinё/Priština was completely closed.[[10]](#footnote-10)
46. Thus, in the Panel’s view, it is not excluded that the ICTY had also conducted its independent investigation into the abduction and killing of Mr Miloš Radunović and the disappearance of Mrs Milica Radunović, as a part of its wider investigation in the case *Haradinaj et al*. It is also possible that UNMIK authorities were not made aware of any such activity on the part of the ICTY OTP. This may explain the lack of information in the investigative file as to the ICTY involvement.
47. Although the Panel was not presented with any evidence as to when the ICTY assumed primacy over these investigations, it is known that on 4 March 2005, the ICTY OTP filed the first indictment in the case *Haradinaj et al* (IT-04-84-I), listing Mr Miloš Radunović as among the Serbian men in the village of Dashinoc/Dašinovac allegedly abducted and killed by the KLA. Therefore, it is clear that by March 2005 at the latest, the ICTY had assumed full control of these investigations.
48. It is also the Panel’s position that 29 November 2012, the date when the ICTY Trial Panel delivered its judgment after the re-trial in the case *Haradinaj et al* (IT-04-84*bis*-T), might reasonably be considered as the end of the ICTY judicial proceedings. None of the accused in the case IT-03-66 were found to be guilty of the abduction and killing of Mr Miloš Radunović and the disappearance of Mrs Milica Radunović by the KLA (see § 57 above).
49. The Panel is conscious of the fact that not all investigations lead to identification and successful prosecution of the perpetrator[s]. However, the Panel has also stated on many occasions that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result and that an investigation must be undertaken in a serious manner and not be a mere formality (see e.g. HRAP, *Mladenović*, opinion of 26 June 2014, §§ 192 – 194; *Remištar*, case no. 245/09, § 115). Thus, the Panel considers that as those responsible for Mr Miloš Radunović’s abduction and killing or the disappearance of Mrs Milica Radunović have been brought to justice, the procedural obligation under Article 2 of the ECHR was not discharged and the investigation should have been continued, although a long time had passed from the alleged crimes.
50. In this respect, the Panel recalls that the European Court of Human Rights, expressing its position on a similar matter, stated that “there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity (see ECtHR, *Brecknell v. the United Kingdom,* cited in § 106 above, at § 69).
51. In the Panel’s view, after the ICTY Trial Chamber’s decision in the re-trial, of November 2012, in accordance with the continuous obligation to investigate, the competence to do so should have been formally transferred back to EULEX, which on 9 December 2008 assumed full operational control in the area of the rule of law in Kosovo (see § 21 above). Then it would be for the EULEX authorities to use the means at their disposal to review the investigation to ensure that nothing had been overlooked, as well as to inform relatives regarding the progress of this investigation. However, the action of authorities, other than UNMIK, after December 2008 does fall outside the Panel’s jurisdiction (see §§ 63 - 65 above).
52. The Panel deeply regrets that the investigation and the judicial proceedings at the ICTY, as well as those conducted by UNMIK, have not to date been able to identify the persons responsible for the disappearance of Mrs Milica Radunović and the abduction and killing of Mr Miloš Radunović and bring them to justice. As such, the Panel reiterates that, even though the present situation falls outside of its jurisdiction, there remains the obligation to continue with the investigation in this case, in accordance with the relevant procedural requirements of Article 2 of the Convention.
53. The Panel acknowledges the SRSG’s statement that the ICTY teams autopsied as many bodies as possible with little or no identification work and reburied them in locations still unknown to OMPF (see § 74 above). The Panel expresses its serious concern at the ongoing suffering of the complainant, and of others in similar situations, due to the delay caused by this situation in determining the final location, identification and therefore return of the mortal remains of their relatives. The Panel is also concerned with the apparent discrepancy between the ICTY’s uncertainty as to the identification of Mr Miloš Radunović’s mortal remains and the comments in UNMIK’s files (see §§ 214-215 of the ICTY re-trial judgment of 28 November 2012 referenced on page 19 above and compare with §§ 27, 49 above).
54. Having considered all aspects of this case, the Panel concludes that, as far as this investigation is attributable to the UNMIK authorities, there has been no violation of Article 2, procedural limb, of the ECHR.
55. **Alleged violation of Article 3 of the ECHR**
56. The complainant states that the lack of information and uncertainty surrounding the disappearance of Mrs Milica Radunović caused mental suffering to her and her family. The Panel considers in this respect that the complainant invokes Article 3 of the ECHR prohibiting inhuman and degrading treatment.
57. **The scope of the Panel’s review**
58. 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 §§ 60 - 65 above).
59. 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 § 103 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 92 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).
60. 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).
61. **The Panel’s assessment**
62. The Panel recalls that it was established above that there was no failure in relation to the procedural obligation under Article 2 of the ECHR on the part of UNMIK.
63. The Panel further considers that, according to the findings above, during the period under the Panel’s jurisdiction, UNMIK’s responsibility with respect to all aspects of the procedural obligation under Article 2 of the ECHR was made subject to the primacy of the jurisdiction of the ICTY. The Panel therefore considers that the same is true with respect of the substantive obligation under Article 3 of the ECHR.
64. The Panel has no doubts as to the profound suffering caused by this situation to the complainant, who continues to live in an uncertainty about the fate of her mother. Nevertheless, given the particular circumstances of the case and having found no violation of the procedural element of Article 2 of the ECHR by UNMIK, the Panel considers for the same reasons that there has not been a violation of Article 3 of the ECHR on the part of UNMIK.

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN NO VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN NO VIOLATION OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.**

 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

**CCR** - Case Continuation Report

**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** – UN 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

**OTP** - Office of the Prosecutor of the ICTY

**RFA** - ICTY OTP Request for Assistance

**RoP** - ICTY’s Rules of Procedure and Evidence

**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: Brasey V. *Dealing with the Past: The forensic-led approach to the missing persons issue in Kosovo* // Politorbis Nr. 50 – 3, 2010, p. 163. [↑](#footnote-ref-3)
4. See: *Ibid*., p. 165. [↑](#footnote-ref-4)
5. The ICRC database is available at: http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx (accessed on 10 June 2015). [↑](#footnote-ref-5)
6. The OMPF database is not open to public. The Panel accessed it with regard to this case on 15 October 2015. [↑](#footnote-ref-6)
7. The ICMP database is available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp\_details&l=en (accessed on 15 October 2015). [↑](#footnote-ref-7)
8. See: Statement by Carla Del Ponte Prosecutor of the International Criminal Tribunal for the Former Yugoslavia on the investigation and Prosecution of crimes committed in Kosovo, 29 September 1999 // ICTY webpage [electronic source] - http://www.icty.org/sid/7733 (accessed on 8 October 2015). [↑](#footnote-ref-8)
9. See: Tribunal closes field offices in Croatia and Kosovo // ICTY’s webpage [electronic source] - http://www.icty.org/sid/11180 (accessed on 8 October 2015). [↑](#footnote-ref-9)
10. See: Ibid. [↑](#footnote-ref-10)