

**OPINION**

**Date of adoption: 13 November 2014**

**Cases Nos 144/09, 158/09, 209/09, 210/09, 258/09 and 276/09**

**Ljliana MITROVIĆ, Danijela KRSTIĆ, Slobodanka KRSTIĆ, Snežana SIMONOVIĆ and Jeremija ŠULJINIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 13 November 2014,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint of Mrs Snežana Simonović (no. 258/09) was introduced on 6 April 2009. The complaints of Mrs Ljiljana Mitrović(case no. 144/09), Mrs Slobodanka Krstić (cases nos 209/09 and 210/09) were introduced on 7 April 2009. The complaint of Mrs Danijela Krstić (case no. 158/09) was introduced 13 April 2009. The complaint of Mr Jeremija Šuljinić (no. 276/09) was introduced on 24 April 2009. All cases were registered on 30 April 2009.
3. On 23 December 2009 and 6 October 2010, the Panel requested further information from Mrs Slobodanka Krstić regarding cases nos 209/09 and 210/09. No response was received.
4. On 23 December 2009 and 24 November 2010, the Panel requested further information from Mr Jeremija Šuljinić (no. 276/09). No response was received.
5. On 13 January 2010, the Panel requested additional information from Mrs Slobodanka Krstić and Mrs Ljiljana Mitrović in cases nos 144/09 and 159/09. No response was received.
6. On 9 September 2010, the Panel decided to join the complaints of Mrs Ljiljana Mitrović(case no. 144/09), Mrs Danijela Krstić (case no. 158/09) and Mrs Slobodanka Krstić (cases nos 209/09 and 210/09), pursuant to Rule 20 of the Panel’s Rules of Procedure.
7. On 2 November 2010, the complaint of Mrs Snežana Simonović (no. 258/09) was communicated to the SRSG[[1]](#footnote-1), for UNMIK’s comments on its admissibility.
8. On 5 April 2011, the SRSG presented UNMIK’s response.
9. On 2 February 2012, the complaint of Mr Jeremija Šuljinić (no. 276/09) was communicated to the SRSG, for UNMIK’s comments on its admissibility.
10. On 2 March 2012, the SRSG presented UNMIK’s response.
11. On 19 April 2012, the Panel communicated the joined complaints of Mrs Ljiljana Mitrović(case no. 144/09), Mrs Danijela Krstić (case no. 158/09) and Mrs Slobodanka Krstić (nos 209/09 and 210/09) to the SRSG for UNMIK’s comments on their admissibility.
12. On 10 May 2012, the Panel declared the complaint of Mrs Snežana Simonović (no. 258/09) admissible.
13. On 11 May 2012, the Panel declared the complaint of Mr Jeremija Šuljinić (no. 276/09) admissible.
14. On 17 May 2012, the Panel forwarded its decision on admissibility of the complaint of Mr Jeremija Šuljinić (no. 276/09) to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
15. Following the Panel’s inquiries, on 4 October 2012, UNMIK requested the Archives and Records Management Section of the United Nations’ (UN) Headquarters in New York to locate and return to UNMIK a number of investigative files related to the complaints before the HRAP.
16. On 14 December 2012, UNMIK received the requested investigative files from the UN Headquarters in New York. On 17 December 2012, UNMIK presented those documents, including some documents related to the complaint of Mr Jeremija Šuljinić (no. 276/09), to the Panel.
17. On 7 March 2014, the SRSG presented UNMIK’s response in relation to the merits of the complaint of Mr Jeremija Šuljinić (no. 276/09).
18. On 13 March 2014, the Panel decided to join the complaint of Mrs Snežana Simonović (no. 258/09) with the joined case *Mitrović et al* (cases nos 144/09, 158/09, 209/09 and 210/09), pursuant to Rule 20 of the Panel’s Rules of Procedure.
19. On 17 March 2014, the Panel forwarded its joinder decision of 13 March 2014 to the SRSG, requesting UNMIK’s comments on the merits of the five joined complaints.
20. On 9 April 2014, the SRSG provided UNMIK’s response, together with the copies of the available relevant investigative documents.
21. On 22 April 2014, the Panel decided to add the complaint of Mr Jeremija Šuljinić (no. 276/09) to the previously joined case *Mitrović et al* (cases nos 144/09, 158/09, 209/09, 210/09 and 258/09) pursuant to Rule 20 of the Panel’s Rules of Procedure.
22. On 23 April 2014, the Panel forwarded its joinder decision of 22 April 2014 to the SRSG, requesting any additional comments from UNMIK on the merits of the six joined complaints.
23. On 2 June 2014, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the cases could be considered final.
24. On 6 June 2014, UNMIK provided its response.
25. On 3 July 2014, the Panel asked UNMIK for additional information in relation to the complaint of Mrs Snežana Simonović (case no. 258/09).
26. On 16 July 2014, the SRSG provided UNMIK’s response with regard to the merits of the six joined complaints, together with the copies of the available relevant investigative documents in relation to the complaint of Mr Jeremija Šuljinić (case no. 276/09).
27. On 9 September 2014, UNMIK provided its response to the Panel’s request for additional information of 3 July 2014.
28. **THE FACTS**
29. **General background[[2]](#footnote-2)**
30. The events at issue took place in the territory of Kosovo during the armed conflict and after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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.
38. 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”.
39. 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 chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document reiterating, among other things, its commitment to solving the fate of missing persons from all communities, and recognizing that the exhumation and identification programme is only a part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
40. 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.
41. 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.
42. **Circumstances surrounding the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr živorad Krstić and Mr Miroslav Šuljinić**
43. Mrs Ljiljana Mitrovićis the wife of Mr Slobodan Mitrović. Mrs Danijela Krstić is the wife of Mr Milovan Krstić. Mrs Slobodanka Krstić is the mother of Mr Milovan Krstić and Mr Miodrag Krstić. Mrs Snežana Simonović is the daughter of Mr živorad Krstić. Mr Jeremija Šuljinić is the brother of Mr Miroslav Šuljinić.
    1. *Abduction of Mr Slobodan Mitrović (case no. 144/09)*
44. According to Mrs Ljiljana Mitrović, her husband, Mr Slobodan Mitrović, was abducted together with Mr Milovan Krstić and Mr Miodrag Krstić, on 24 June 1998, by armed KLA members, somewhere on the road between Shtime/Štimlje and the village of Duhël/Dulje, municipality of Suharekë/Suva Reka. Since that time his whereabouts have remained unknown.
45. She further states that the abduction was reported to the ICRC, the Yugoslav Red Cross, the International Criminal Tribunal for former Yugoslavia (ICTY), KFOR, UNMIK, OSCE and the Serbian Ministry of Internal Affairs (MUP).
46. She provides copies of two certificates, one issued by the Yugoslav Red Cross on 27 August 1999, ref. no. 0901-3446-54/98, and the other issued on 28 January 2000 by the Serbian MUP, ref. no. 04 br. 230-1/00. Both certificates confirm the same information as above.
47. The ICRC tracing request for Mr Slobodan Mitrović was opened on 26 June 1998, it remains open[[3]](#footnote-3). The field “Date of last contact/news” in the relevant entry in the ICRC database reads “01.07.1998”, the field “Place of last contact/news” reads “LAPUSNIK/LLAPUSHNIK”, and the field “District of last contact/news” reads “GLOGOVAC/GLLOGOVC”.
48. The name of Mr Slobodan Mitrović is also in the list of missing persons, which was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF[[4]](#footnote-4). The entry in relation to him in the online database maintained by the ICMP[[5]](#footnote-5) reads in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.
    1. *Abduction of Mr Milovan Krstić (cases nos 158/09 and 209/09)*
49. Mrs Danijela Krstić states that her husband, Mr Milovan Krstić, disappeared on 24 June 1998, somewhere near the village of Carralevë/Crnoljevo, municipality of Shtime/Štimlje. Since that time, his whereabouts have remained unknown. This complainant gave no details as to the reporting of the event.
50. Mrs Slobodanka Krstić, in her complaint in relation to her son, Mr Milovan Krstić, provides the same account of his abduction as that given by Mrs Ljiljana Mitrović (see § 40 above). She clarifies that the abduction was reported to the ICRC, the Yugoslav Red Cross, the ICTY, KFOR, UNMIK and the Serbian MUP.
51. According to the certificate issued by the Yugoslav Red Cross on 26 November 1999, ref. no. 0901-3446-55/99, Mr Milovan Krstić was abducted by armed KLA members, on 24 June 1998, “on the road Kruševac - Suva Reka”.
52. The ICRC tracing request for Mr Milovan Krstić was opened on 26 June 1998 and it remains open[[6]](#footnote-6). The relevant entry in the ICRC database contains the same additional information as the entry in relation to Mr Slobodan Mitrović (see § 43 above).
53. The name of Mr Milovan Krstić is also in the list of missing persons, which was sent by the ICRC to UNMIK on 10 September 2001, as well as in the database compiled by the UNMIK OMPF[[7]](#footnote-7). The entry in this regard in the online database maintained by the ICMP[[8]](#footnote-8) reads in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.
    1. *Abduction of Mr Miodrag Krstić (case no. 210/09)*
54. Mrs Slobodanka Krstić, in her complaint in relation to her son Mr Miodrag Krstić, provides the same account of his abduction as given by Mrs Ljiljana Mitrović (see § 40 above). She likewise adds that the abduction was reported to the ICRC, the Yugoslav Red Cross, the ICTY, KFOR, UNMIK and the Serbian MUP.
55. The ICRC tracing request for Mr Miodrag Krstić remains open[[9]](#footnote-9). The relevant entry in the ICRC database contains the same additional information as the entry in relation to Mr Slobodan Mitrović (see § 43 above).
56. The name of Mr Miodrag Krstić is also in the list of missing persons, which was sent by the ICRC to UNMIK on 10 September 2001, as well as in the database compiled by the UNMIK OMPF[[10]](#footnote-10). The entry in this regard in the online database maintained by the ICMP[[11]](#footnote-11) reads in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.
    1. *Abduction of Mr živorad* *Krstić (case no. 258/09)*
57. Mrs Snežana Simonović states that her father, Mr živorad Krstić, was abducted on 25 June 1998, by armed KLA members, from a regular bus en route from Prizren to Prishtinё/Priština, near the village Carralevë/Crnoljevo, Shtimё/Štimlje municipality. Since that time, his whereabouts have remained unknown.
58. The complainant indicates that she reported her father’s abduction to the ICRC, KFOR and UNMIK, including the international prosecutor (IP) of the Prishtinё/Priština District Public Prosecutor’s Office (DPPO).
59. The ICRC tracing request for Mr živorad Krstić was opened on 26 June 1998 and it remains open[[12]](#footnote-12). The relevant entry in the ICRC database contains the same additional information, as the entry in relation to Mr Slobodan Mitrović (see § 43 above).
60. The name of Mr živorad Krstić is also in the list of missing persons, which was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF[[13]](#footnote-13). The entry in relation to Mr živorad Krstić in the online database maintained by the ICMP[[14]](#footnote-14) reads in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.
61. This complainant provides a copy of what seems like a statement from a witness, who was in the same bus with Mr živorad Krstić, on 25 June 1998. According to this witness, on that day there were about 50 passengers aboard that bus, Serbs, Albanians and Turks; there were also three armed Yugoslav soldiers in uniforms at the back of the bus. The bus departed from Prizren at around 10:30 and in about an hour it stopped at a bus stop in the village Carralevë/Crnoljevo. At that moment, a group of about 15 armed KLA members surrounded the bus and made all the Serb passengers (one woman and four men) to step outside; three of them very soon came back and the bus driver was ordered to leave the place and continue up the road. Mr živorad Krstić was one of the two passengers who did not return to the bus. The soldiers were not taken by the KLA, as, according to the same witness, they had hidden under the seats. The witness also provided the name of the private company that owed the bus, the registration number of the bus and the name of another person, who was with him on that bus.
62. Mrs Snežana Simonović also provides a copy of a contract for the sale of real property, concluded on 15 August 2001 and registered on the same day by the Municipal Court (MC) of Mitrovicё/Mitrovica under the no. 1140/2001. According to this contract, on that date Mr živorad Krstić had sold all his immovable property in Prishtinё/Priština (a house and an adjustment land parcel) to Ms H.B., for 300.000 deutschemarks, had collected the money, and had personally signed the contract. A lawyer, Mr B.Ç., authorised by the buyer, had signed the contract on her behalf.
63. According to a stamp on the back of the contract, the sales tax in the amount of 2500 deutschemarks was paid to the Directorate of Economy, Municipality of Prishtinё/Pristina; this payment appears to have been registered under the no. 03-1/651 of 24 August 2001. The middle name of Mr Živorad Krstić in the text of the contract is misspelled (“Jeremića” instead of Jeremija), and his Serbian personal identity number (the “JMBG”) is different from the one on his ID card, a copy of which was provided by the complainant.
    1. *Abduction of Mr Miroslav Šuljinić (case no. 276/09)*
64. The complainant states that on 21 May 1998, Mr Miroslav Šuljinić was abducted by KLA members near Llapushnik/Lapušnik village, Gllogovc/Glogovac municipality. Since that time Mr Šuljinić’s whereabouts have remained unknown.
65. The complainant states that the disappearance was reported to the ICRC and the Serbian MUP.
66. Mr Jeremija Šuljinić provides a certificate issued on 1 December 2003 by the Serbian MUP, ref. no. 986/2003, confirming that on 13 December 2002, the Serbian MUP submitted a criminal report against unknown perpetrators in relation to the abduction of Mr Miroslav Šuljinić. The document shows that the case was registered by the DPPO for Prishtinё/Priština, located in Niš, Serbia proper, under the no. KU 145/02.
67. The ICRC tracing request for Mr Miroslav Šuljinić remains open[[15]](#footnote-15). The field “Date of last contact/news” in the relevant entry in the ICRC database reads “21.05.1998”, the field “Place of last contact/news” reads “LAPUSNIK/LLAPUSHNIK”, and the field “District of last contact/news” reads “GLOGOVAC/GLLOGOVC”.
68. The name of Mr Miroslav Šuljinić is also in the list of missing persons, which was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF[[16]](#footnote-16).
69. The entry in relation to Mr Miroslav Šuljinić in the online database maintained by the ICMP[[17]](#footnote-17) reads in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.
70. **The investigation**
71. *Disclosure of relevant files*
72. In the present case, the Panel received from UNMIK investigative documents previously held by the UNMIK OMPF and the UNMIK Police WCIU. In addition, on 17 December 2012, the Panel received some investigative documents in relation to the investigation into Mr Miroslav Šuljinić’s abduction, which were returned from the UN Headquarters’ archives (see § 15 above). The Panel notes that UNMIK has confirmed that all available documents have been provided.
73. Concerning disclosure of the information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that, although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.
74. *Investigation into the abduction of Mr Slobodan Mitrović (case no. 144/09), Mr Milovan Krstić (cases nos 158/09 and 209/09) and Mr Miodrag Krstić (case no. 210/09)*
75. This part of the file starts with a memorandum, dated 15 February 2000, by which the MPU requested the Serbian authorities to provide information on the disappearance of Mr Slobodan Mitrović (MPU case no. 2000-001630), Mr Milovan Krstić (MPU case no. 2000-001631) and Mr Miodrag Krstić (MPU case no. 2000-001632).
76. In its response, dated 21 February 2001, the Manager of the Serbian Provincial Team for Liaison with KFOR had provided all available information on these three missing persons, including the circumstances of their abduction, and the main suspects, Mr F.L. and Mr N.K. In the same letter, the Manager had requested an update on the investigative steps undertaken by international authorities in relation to their abduction.
77. A one-page UNMIK Police MPU Case Continuation Report (CCR) on the case no. 2000-001631 indicates that this case was entered in their database for the first time on 6 November 2000, that on 15 March 2002, the MPU had received ante-mortem data from the ICRC, and that on 13 July 2002, a Disaster Victim Identification form was also received from the ICRC.
78. Another one-page MPU CCR, in relation to the cases nos 2000-001630, 2000-001631 and 2000-001632, has one entry, dated 8 March 2001, stating that during a meeting in Serbia proper the Serbian authorities had mentioned a certain Mr V.P., who supposedly had information about Mr Slobodan Mitrović’s fate. A remark to this entry reads: “[i]t is not likely that the [witness] if he knows something, will speak. Maybe a confidential talk can help us to get some information about a burial site. Without further involving the witness in the case.” In the field “To Do” an investigator had planned to: “Locate this witness” and “Check his willingness to help.”
79. The file further contains a Victim Identification Form for Mr Slobodan Mitrović, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 44 above). Besides his personal details and ante-mortem description, it provides the name and complete contact details of his wife (the complainant, Mrs Ljliana Mitrović). A similar, also undated, identification form provides the name and contact details for his mother, Mrs T.M. This form also states, among other things, that Mr Slobodan Mitrović’s ID card, which was with him when he was abducted, was later found “in Mališevo”. His photograph and a copy of marriage certificate are attached to this form.
80. The file also contains a similar Victim Identification Form for Mr Milovan Krstić. Besides his personal details and ante-mortem description, it provides the name and complete contact details of his wife (Mrs Danijela Krstić) and of his sister-in-law, Mrs J.K. Also in the file is another, undated, identification form for him. Both forms state, among other things, that ID card, which was with Mr Milovan Krstić when he was abducted, was later found “in Mališevo”. Mr Milovan Krstić’s photograph and a copy of marriage certificate are attached to this form.

1. By a memorandum, dated 10 July 2002, an MPU officer in Belgrade informed the Head of the MPU of his meeting with Mrs Slobodanka Krstić and Mr D.Ð., on 9 July 2002. Mrs Slobodanka Krstić had informed the MPU that two days after the abduction of Mr Slobodan Mitrović, Mr Milovan Krstić and Mr Miodrag Krstić, a Kosovo Albanian neighbour of theirs, Mr D., came to their family house and told her that all three were alive and that they would be released in 3 days. This person came a few times more, assuring the family that the abducted persons were alive and that he was trying to help. According to Mrs Krstić, this Mr D. was relatively easily to be located.
2. The memorandum continues that approximately three months more after the abduction, a Kosovo Albanian woman, Ms B., approached Mrs Krstić and provided some more information about her sons. Ms B. also promised to put Mrs Krstić in contact with some KLA people, who could at least arrange for her to speak on the phone to her sons. She added that Mrs Krstić’s sons had been taken “to Mališevo”. The next day, Mrs Krstić met two Kosovo Albanians, Mr C. and Mr D., who told her that her sons, as well as Mr Slobodan Mitrović, were alive, but they were not allowed a phone conversation. Mrs Krstić also informed the investigator of a certain Mr E., who had additional details about the abduction.
3. Finally, that memorandum states that at some point a relative of the abducted persons, Mr D.K., had seen Mr Milovan Krstić in a KLA uniform, in a TV broadcast in Germany. Attached to the memorandum are photographs of Mr Milovan Krstić and Mr Miodrag Krstić.
4. A printout from the MPU database in relation to the case no. 0435/INV/05, dated 26 November 2004, briefly states that Mr Slobodan Mitrović was “[k]idnapped with Krstic Milovan and Krstic Miodrag, between 15.00-16.00 … with the car brand GOLF type 3, dark blue color between Stimlje-Suva Reka by UCK members [F.L.] and [K.].”
5. The file further contains an MPU Victim Identification Form, dated 8 December 2004, briefly repeating Mr Slobodan Mitrović’s identification details.
6. An MPU Ante-Mortem Investigation Report on the MPU case no. 0435/INV/05 in relation to the disappearance of Mr Slobodan Mitrović is cross-referenced to the investigation no. 2000-001631. This report was initiated on 9 December 2004 and completed on 24 December 2004. This report’s field “Background of the Case” provides very brief information on the disappearance of Mr Slobodan Mitrović. The field “Further Investigation” mentions that the above exchange of letters between the MPU and the Serbian Team for Liaison with KFOR (see §§ 68 - 69 above)
7. Further, it states that the Head of the MPU had mentioned in a report (not found in the file) that a person - Mr V.P. was supposed to be in possession of information regarding the fate of Mr Slobodan Mitrović, but that the potential witness had not been interviewed. This part of the report ends as follows: “The undersigned while investigating the case tried to contact the next-to-kin of [Mr Slobodan Mitrović]. But it was not possible. Nobody is answering to the phone number mentioned in the DVI form.”
8. The report’s field “Witness Interviewed” reads “No witness available at the moment to be interviewed.” At the conclusion of this report, the investigator wrote: “After investigations, its impossible at this time to find an impartial witness. No information leading to a possible MP’s location. This case should remain open pending within the WCU.” The status of the case is put as “pending.”
9. Another printout from the MPU database, generated on 25 December 2005, in the field “Invest. Notes” states: “See inv report.” This report’s field “Results” reads “Pending.”
10. *File in relation to Mr Živorad Krstić (case no. 258/09)*

1. The file in relation to Mr Živorad Krstić contains a death certificate with a serial no. 24/16-2001, issued by the Municipality of Prishtinё/Priština displaced in Serbia proper, indicating the date of his death as 9 December 1999. Another document, which is a copy of the ruling of the Municipal Court of Prishtinё/Priština, displaced in Serbia proper, dated 25 July 2001, no. II.lin.no.3/00, states that Mr Živorad Krstić should be considered legally dead as of 9 December 1999.
2. An OMPF Victim Identification Form in relation to Mr Živorad Krstić, dated 14 December 2004, linked to the MPU case no. 2002-000561, presents the identification information on this victim.
3. An MPU Ante-Mortem Investigation Report on the case no. 2002-000561, also bearing the number 0190/INV/05, was initiated on the 12th and completed on the 18th of January, 2005. The field “Witness” on the front page has the name and complete contact details of Mr Ž.Đ. in Serbia proper.
4. This report’s field “Nature of Information” provides very brief information on the disappearance of Mr Živorad Krstić: “Zivorad KRSTIC, resident of Pristina, Aktas I area, No. 80, Suncani Breg District, was kidnapped from the bus (Prizren-Pristina) in Suva Reka on 25/06/1998. He was last seen at Llapushnik/Lapusnik KLA camp. This case was reported to ICRC Belgrade under number YUK-050028 and a MPU file opened on 24/06/2002.” The “Further Investigation” field states that the MPU had a telephone conversation with Mr Ž.Đ., who is a relative of Mr Živorad Krstić. He informed the Police that his relatives recognised Mr Živorad Krstić in a photograph that had been displayed during the ICTY trial of Mr Fatmir Limaj, Mr Haradin Bala and Mr Isak Musliu, which was broadcasted by Serbian television. The report adds that the name of Mr Živorad Krstić can be found in the Annex I to the Second Amended Indictment in the above-mentioned ICTY case against Mr Fatmir Limaj and others (see details related to the ICTY proceedings in §§ 129-132 below).
5. At the conclusion of this report, the investigator wrote: “From the Second amended Indictment of the above-mentioned KLA commanders it’s clear that Zivorad KRSTIC was murdered between 24 June 1998 and 26 July 1998 as a detainee at the Lapusnik/Llapushnik Prison Camp. But there is no information leading to a location of [his] remains. The case should remain open inactive within the WCU.” The status of the case is put as “inactive”.
6. The file further contains a printout from the MPU database in relation to the case no. 0190/INV/05, cross-linked to the case no. 2002-000561, dated 19 January 2005. The field “Request Summary” of this document reads: “No new information could be collected”; the field “Results” reads “Pending.”
7. *Investigation in relation to the alleged illegal sale of Mr Živorad Krstić’s immovable property in Kosovo*
8. The investigative file also contains a number of documents related to the investigation into an alleged fraudulent sale of Mr Živorad Krstić’s immovable property in Prishtinё/Priština, in August 2001. The first document in this regard is a copy of the sales contract (see § 58 above).
9. According to another sales contract, on 3 June 2004, Ms H.B. had sold this property to Mr. M.Z. On behalf of the seller, the contract was signed by a lawyer, Mr. H.M., authorised by Ms H.B.; a copy of the authorisation letter, issued on 22 May 2003 in Stockholm, Sweden, is also in the file. According to a stamp of the Prishtinё/Priština MC, this contract was registered by its Registry on 22 June 2004, under the no. VR.nr. 3569/2004.
10. This part of the file contains a certificate issued to Mr M.Z. by the President of the MC of Mitrovicё/Mitrovica, on 3 October 2006, confirming that the first sales contract between Mr Živorad Krstić and Ms H.B. was in fact registered by that Court on 15 August 2001, under the no. VR.nr.1140/2001.
11. According to a Request to Conduct Investigation, dated 8 November 2007, no. CIR 2007/698/PRS/AC, an UNMIK International Prosecutor had ordered UNMIK Police WCIU to investigate the circumstances of the alleged illegal sale of Mr Živorad Krstić’s property, as the DOJ had apparently received a complaint from his relatives in this regard; Ms H.B., Mr. B.Ç., Mr M.Z. and Mr H.M. are mentioned as “targets” in this request. In addition, the request mentions that the lawyer, Mr B.Ç., was at that time in detention, accused of a numerous forgeries.
12. According to the International Prosecutor, “[t]here can be two conclusions from the above-mentioned [allegations of the fraudulent property transaction]:

*1.* The MP Krstić had not died in captivity and at least on 15 August 2001 he appeared in Mitrovica to sign the contract. In this case the first buyer – Ms. [H.B.] and her lawyer [B.Ç.] would be in position to shed light on the whereabouts of the MP and ways to contact him.

*2.* The contract was intentionally falsified by [perpetrators] in order to come into illegal possession of the MP’s very valuable immovable property. In this case it is very probable that the targets had verified information the MP was in fact dead and therefore would not appear and reclaim his property rights. If this is true – the offenders might be accomplices to his disappearance and murder, or might reveal people who bear responsibility for that crime.”

1. Thus, the International Prosecutor requested the WCIU to undertake the following action:
   * + Identify and locate all targets and take their statements, making them understand that they might be considered accomplices to commission of a war crime;
     + Collect copies of all documents in relation to those property transactions;
     + Report back to the IP on the results of the investigation by 10 December 2007.
2. On 2 March 2008, a WCIU investigator submitted a memorandum to the UNMIK Police INTERPOL Liaison Office, requesting assistance in obtaining from the Serbian authorities information on a person with the Serbian personal ID number, that was put on the sales contract dated 18 August 2001, and which was not the same as the proper one of Mr Živorad Krstić (see § 59 above). In the same request, the investigator asked for complete background information on Ms H.B. to be sought from Serbian and Swedish authorities.
3. A WCIU Supplement/Continuation Form, dated 30 April 2008, further outlines the action undertaken by the Police in relation to the IP request CIR 2007/698/PRS/AC up to that date. In particular, the investigator was able to collect documents from the registry of the Mitrovicё/Mitrovica MC, obtain information on the people involved in the transaction from the Kosovo Civil Registry, the Serbian and Swedish authorities. Also, the police had located and interviewed Mr M.Z. and Mr H.M. (the buyer and the lawyer, mentioned in the sales contract of 2003). However, their statements are not in the file. Likewise, the file does not indicate that the lawyer, Mr B.Ç. was interviewed, despite that he was in detention in Kosovo.
4. At the end of that Supplement/Continuation Form, the investigator stated that he was not able to reach either Ms H.B. or Mr B.Ç., as the first was in Sweden and the latter in jail, and he sought an advice from the International Prosecutor. According to the investigator, “the first contract of sale of Zivorad Krstic (MP)’s house was probably a case of falsification arranged by lawyer [B.Ç.]”. Therefore, it was suggested that the case be handed over to the UNMIK Police Economic Crimes Unit for further investigation.
5. The next document in the file is a report of the UNMIK Police Ante Mortem and Exhumation Section on the case 0190/INV/05, dated 2 June 2008; it is cross-referenced to the MPU investigation no 2002-000561. This report outlines the action undertaken by the police to that date in relation to the two events: the first - the abduction, detention and possible killing of Mr Živorad Krstić by the KLA, connecting it to the ICTY case against Mr Fatmir Limaj and others (see below, §§ 129 - 132); and the second – fraudulent sale of his immovable property. With regard to the first, it is stated that a witness, Mr Ž.Đ., was interviewed, but his statement is not found in the file; the report lists the same suspects as in the ICTY case IT-03-66. In relation to the second event, the sale of property, this report provides personal details on all “targets” mentioned in IP request above (see § 92) and states that Mr H.M. and Mr M.Z. had been interviewed, but their statements are also not in the file. The investigator proposed to continue investigating into the alleged illegal sale of property and into a doubt as to whether Mr Živorad Krstić had been abducted at all and was missing, a doubt which was apparently raised by Mr M.Z.
6. By memorandum, dated 20 June 2008, addressed to the UNMIK Police ICTY Liaison Unit, the Ante Mortem and Exhumation Section had requested the ICTY to disclose to UNMIK Police the available evidence in relation to Mr Živorad Krstić’s detention by the KLA, his killing, and the possible identification of his mortal remains and their return to the family.
7. On 2 July 2008, the same investigator had requested the OMPF for an update on any development in relation to the location and identification of Mr Živorad Krstić’s mortal remains, as well as on any recent communication with the family members. No response to this memorandum is in the file. The same requests were sent on the same day to the ICMP and the ICRC.
8. By an undated e-mail, apparently responding to a request similar to the one above to the OMPF, the ICRC office in Prishtinё/Priština confirmed that the case of Mr Živorad Krstić was still open in their records, that the ICRC was in regular contact with his family members, and that their contact information may be released to the police. The ICRC also affirmed that all information available to the ICRC, beyond what was made public in the ICRC “Book of Missing”, “is confidential and therefore submitted only to the alleged authorities responsible for the disappearance.”
9. On 8 July 2008, the same investigator of the Ante Mortem and Exhumation Section prepared another progress report on the investigation in relation to the fraudulent property transaction.
10. The OMPF Victim Identification Form in relation to Mr Živorad Krstić, dated 10 July 2010, presents the identification information on this victim.
11. The file further contains another OMPF Victim Identification Form, dated 10 July 2008, in relation to Mr Živorad Krstić, presenting the same information as the above-mentioned form dated 14 December 2004 (see § 83).
12. On 14 July 2008, apparently in response to the investigator’s earlier request for information related to the location and identification of Mr Živorad Krstić’s mortal remains (see § 100 above), the OMPF provided the information that the necessary blood samples had been collected from his relatives, but that to date his remains had not been identified, In addition, the OMPF confirmed that two other individuals who had disappeared on 24 June 1998 in the same area had been identified and that the DNA identification of the third body was still pending with the ICMP.
13. On the same day, a Case Handover Report in relation to the property transaction was prepared by the Ante Mortem and Exhumation Section. This document lists a number of actions, which still had to be undertaken: interview Mr. B.Ç. in detention centre; obtain original property transaction and the samples of Mr Živorad Krstić’s handwriting, in preparation for a forensic examination of the signatures; interview his daughters and analyse the documents received from the Kosovo Property Agency.
14. The file also contains a certificate issued on 21 July 2008 by the Serbian MUP and the Serbian Commission on Missing Persons, confirming that Mr Živorad Krstić was kidnapped on 1 July 1998 in Llapushnik/Lapušnik, and that his name is still in the “Consolidated List of the Missing Persons on the Territory of Kosovo and Metohija”.
15. On 28 July 2008, the same investigator wrote an Investigation Progress Report on the investigation into the abduction of Mr Živorad Krstić, but without any new information in it. It is also mentioned there that the “line of investigation” related to the property transaction “has now been handed over to [Special Investigation Unit]”.
16. On 8 August 2008, the ICTY Liaison Officer responded to UNMIK Police’s request for information (see § 99 above) and transferred a number of documents related to Mr Živorad Krstić from the ICTY investigative file IT-03-66.
17. On 2 September 2008, the Serbian MUP informed UNMIK Police that, according to their database, Mr Živorad Krstić’s pension was regularly paid until 31 January 2007 and was collected by his daughter, Ms. L.K.
18. The Investigation Closure Report, written by the same investigator of the Ante Mortem and Exhumation Section, on 14 October 2008, briefly describes the situation of the investigation. In particular, it mentions that the responses from the Serbian MUP and the ICTY were not informative and did not provide any specific references that would enable the location and identification of Mr Živorad Krstić’s mortal remains. It also mentions the fact that the identification of one of the bodies “recovered along with another identified victim in Lapushnik case is still pending”.
19. In the same report, the investigator stated that: “There is no investigative process pending in this case apart from confirming the final identification of the MP. No fresh leads on the circumstances of his death have been brought out and the assumption that he was a victim of the Lapushnik prison camp case in [the ICTY] stands and has been apparently accepted by the family. Therefore, the investigator concluded that “[t]he investigation of the case may therefore be suspended. The Missing Person report may be kept pending till formal identification.” No more documents relevant to this investigation is on file.
20. *Proceedings before the Housing and Property Directorate (HPD)[[18]](#footnote-18), in relation to the sale of Mr Živorad Krstić’s immovable property*
21. The claim of Mrs Snežana Simonović for restitution of her property rights has been decided by the Housing and Property Claims Commission (HPCC), on 18 June 2005; it is reflected in the HPCC decision no. HPCC/D/194/2005/C. In relation to the property in question it reads as follows:

6.7 In Claim No. 003003 the respondent alleges that he has permission from the “owner” of the claimed property to live in the property. In support of his allegation the Respondent submitted a “purchase contract” concluded in August 2001 between the alleged owned and the previous owner of the claimed property. However, the verification conducted by the [HPD] has revealed that the previous owner *was kidnapped in June of 1998 and that his whereabouts remain unknown* [emphasis added]. Consequently, he could not have participated in the alleged transaction. The Respondent’s defence thus stands to be dismissed.

1. It further appears that Mr M.Z. contested the above decision of the HPCC, but his request was rejected by a decision of 19 January 2007, no. HPCC/REC/91/2007. Subsequently, on 7 May 2008, the HPD Registrar had issued a final certificate, confirming that the proceedings in relation to the claim DS 003003 were finalized, that the decision “may no longer be the subject of proceedings before the HPCC or be legally challenged” and that it became “binding and enforceable and may not be subject to review by any other judicial or administrative authority in Kosovo.”
2. The Panel was also informed that one of the lawyers involved in this alleged fraudulent sale, Mr. B.Ç., was sentenced in 2007 to a long term of imprisonment for numerous forgeries in relation to similar illegal transactions of properties belonging to persons displaced from Kosovo, missing and killed during the conflict. As mentioned above, on 3 July 2014, the Panel requested UNMIK to locate and present the file in relation to him, for its review. However, on 9 September 2014, UNMIK responded that it was not able to do so.
3. *File in relation to Mr Miroslav Šuljinić (case no. 276/09)*
4. The earliest document in the investigative file related to Mr Miroslav Šuljinićis an UNMIK Police initial incident report, dated 22 January 2000, reflecting the fact that on that day Mr Dragoljub Šuljinić, the father of Mr Miroslav Šuljinić, had appeared at the UNMIK Police station in Leposaviq/Leposavić and reported the latter’s disappearance. Attached to this report is a copy of the written and signed statement of Mr Dragoljub Šuljinić, as well as its English translation. The content of that statement largely corresponds to the information provided in the relevant ICTY judgment in the case *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, no. IT-03-66 (see §§ 129 and 130 [in §§ 352 and 352 of the judgment] below).
5. An MPU CCR, dated 6 February 2000, states that on that date a report from the Mitrovicё/Mitrovica Regional Investigation Unit (RIU) about Mr Miroslav Šuljinić’s disappearance was received by the MPU.
6. On 16 February 2000, the MPU informed the Mitrovica RIU and the Leposavić Police Station that it had taken the case over and opened an investigation into it; the case was given a no. 2000-000034. The MPU had also informed the CCIU about the matter. On the same day, the MPU requested all UNMIK Police units to check their databases for any information in relation to Mr Miroslav Šuljinić. According to another CCR, seven responses received by April 2000 were negative.
7. The file further contains an undated OSCE “Human Rights Interview/Incident Form”, providing brief information on Mr Miroslav Šuljinić’s disappearance, apparently provided by his father.
8. Another MPU CCR on the case no. 2000-000034 indicates that on 16 February 2000, all information was entered into the MPU database.
9. The file further contains a Victim Identification Form for Mr Miroslav Šuljinić, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 44 above). Besides his personal details and ante-mortem description, it provides the name and complete contact details of his sister and brother (the complainant, Mr Jeremija Šuljinić). Attached to this form are two photographs, as well as photocopies of his Yugoslav passport and “military book”.
10. A similar identification form, dated 6 November 2001, provides the name and contact details for his mother. This form also states, among other things, that his ID card, which was with him when he was abducted, was later found “in Mališevo”. It cross-references to the case no. 2000-00034.
11. A printout from the MPU database in relation to the case no. 0456/INV/04, dated 10 September 2004, provides brief information on the case. The field “Request Summary” states: “Due to technical problems with the database, the file had to be retyped on 21/04/04. It was given for investigation on 01/07/2004. There is a lack of information in this file.” The field “Results” reads “Pending”.
12. An MPU Ante-Mortem Investigation Report on the MPU case no. 0456/INV/04 in relation to the disappearance of Mr Miroslav Šuljinić is cross-referenced to the investigation no. 2000-000034. This report was initiated on 1 July 2004 and completed on 9 August 2004.
13. Its field “Background of the Case” refers to the above-mentioned appearance of Mr Miroslav Šuljinić’s father at the Leposavić Police Station and summarises his statement (see § 116 above). This part of the report further states that in the summer of 2004, the MPU made efforts to locate and interview him. The interview had eventually taken place on 5 August 2004, in the same Police Station.
14. The Field “Conclusion” of this report reads: “In my opinion, the father of the MP is deliberately not revealing the names and particulars of other witnesses who could be interviewed to elicit further information in the instant case because of their security concern. In absence of any input that could facilitate in further probe in the case, it is recommended that the case be kept pending.”
15. By an e-mail, dated 9 August 2004, an MPU officer M.K. informed the ICRC office in Prishtinё/Priština that the MPU had conducted inquiries into the case of Mr Jeremija Šuljinić’s disappearance and re-interviewed “witnesses”. According to this officer, there was “little information as to the circumstances of his disappearance … The only information is that [Mr Jeremija Šuljinić] left home on 21 May 1998 and that on, or little after that date, it is believed that he was detained by KLA members in the village of LEPOSAVIC.”
16. No further investigative documents in relation to this victim are on file.
17. *ICTY Proceedings in relation to all victims*
18. It appears that the circumstances of the abductions and disappearances of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić were investigated by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the proceedings in the case *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu* (IT-03-66). The accused in that case had been charged with murder, cruel treatment, torture, inhumane acts, under Articles 3, 5 and 7 of the ICTY Statute.
19. This investigation apparently concentrated on the “operation of the Lapušnik/Llapushnik Prison Camp of the KLA (hereinafter Lapušnik/Llapushnik Prison Camp)…, located in the municipality of Glogovac/Gllogovc.” The first indictment on the matter was filed on 24 January 2003 (IT-03-66-I) and the Second Amended Indictment on 6 November 2003 (IT-03-66-PT). Below is an excerpt from the second indictment:

30. On a date after 24 June but before 26 July 1998, KLA forces under control of Fatmir LIMAJ and Isak MUSLIU murdered a number of Serb and non-Albanian detainees at the Lapušnik/Llapushnik Prison Camp, whose names are set forth in Annex I to this indictment.

…

**Annex I**

Paragraph 30: Detainees murdered between 24 June and 26 July 1998 at the Lapušnik/Llapushnik Prison Camp:

Milovan Krstić

Miodrag Krstić

Slobodan, aka Boban, Mitrović

Miroslav Šuljinić

Živorad Krstić

…

1. The following is an excerpt from the ICTY Trial Chambers Judgment in the same case, dated 30 November 2005 (IT-03-66-T):

…

263. At about 1900 hours L07 and “Shale” went to the room located upstairs on the first floor to watch television. L07 spent the night together with two “Croatians,” a father and son, abducted from the road in Carraleve/Crnoljevo and two Kosovo Albanians, Faruk Gashi from Shtime/Stimlje and Gzim Emini from Carraleve/Crnoljevo who were wearing civilian clothes. On the following day L07 was taken to a room, later identified as the storage room, where he was detained for two days and one night. Six Kosovo Albanians and six Serbs were already detained in that room; Lutfi from Breg-i-Zi/Crni Breg, Witness L10, and Adem from Godanc/Godance, a Serb named Mija from Recani, Halim Budakova, a former Serbian policeman in Shtime/Stimlje who had been shot in both knees, and two other Serbs. L07 was also able to recognize the photographs of Miodrag Krstić, Milovan Krstić and Slobodan Mitrović as having been among the prisoners held in the storage room. L07 stated that the room was guarded by Shala. There were other KLA guards in the camp: a masked soldier called Hoxha who beat the prisoners on two occasions, and Murrizi.

…

(x) Milovan Krstić and Miodrag Krstić

339. Ljiljana Mitrović testified that, on 24 June 1998, Slobodan Mitrović and Milovan Krstić collected Miodrag Krstić from a hospital in Belgrade and departed for Reqan/Rečane in Kosovo. They were travelling in a navy blue Volkswagen Golf. They stopped at Krusheve/Krusevac. No more was heard from them. Having arrived in Kosovo to search for her husband, Slobodan Mitrović, Ljiljana Mitrović was told by Abdyl Kryeziu that Slobodan Mitrović and the Krstić brothers, all ethnic Serbs, had been kidnapped in Carraleve/Crnoljevo and taken in the direction of Malisheve/Malisevo. Slobodanka Krstić stated that her late husband’s brother told her he saw Miodrag Krstić’s car in Malisheve/Malisevo one month after the kidnapping, driven by a Kosovo Albanian from Malisheve/Malisevo called Liman.

340. Numerous individuals identified both Milovan Krstić and Miodrag Krstić as prisoners in the storage room at the Llapushnik/Lapusnik prison camp. Ivan Bakrać testified that Milovan Krstić recounted to him how he was brought there. Ivan Bakrać stated that Milovan Krstić told him that he was brought to a school in his own car, which Ivan Bakrać said was a navy blue Volkswagen Golf. Vojko Bakrać gave evidence that he heard the same account from the “Krstić brothers.” Personal documents belonging to Milovan Krstić were apparently found at Llapushnik/Lapusnik. On the basis of this evidence, the Chamber is satisfied that Milovan Krstić and Miodrag Krstić were detained at the Llapushnik/Lapusnik prison camp by the KLA for an undetermined period of time beginning on 24 June 1998. The Chamber concludes that they were taking no active part in hostilities during that time.

341. The Chamber is satisfied from the evidence as to the conditions in which these and the other prisoners were kept, that the conditions of detention in the storage room were such as to constitute cruel treatment (Count 6). There is, however, no evidence of direct and specific further mistreatment committed against Milovan Krstić or Miodrag Krstić.

342. The Prosecution alleges that Milovan and Miodrag Krstić were murdered at the Llapushnik/Lapusnik prison camp between 24 June 1998 and 26 July 1998. Since the bodies of Milovan and Miodrag Krstić have not been recovered, the Prosecution invites the Chamber to apply the factors listed in *Prosecutor v. Krnojelac* to determine that the elements of murder are satisfied. A number of years have elapsed since Milovan and Miodrag Krstić disappeared, and they have not contacted their family or others during that time. The Chamber has evidence of the disappearances of others detained at Llapushnik/Lapusnik. No evidence has been advanced indicating the mistreatment of Milovan Krstić or Miodrag Krstić during their detention in Llapushnik/Lapusnik, but the Chamber takes into account evidence of the general conduct towards those detained and the acts of violence perpetrated against certain detainees. The Chamber is also conscious of evidence that some persons who were detained in the prison camp were later released.

343. Nevertheless, the evidence led by the Prosecution does not enable the Chamber to be satisfied that the Prosecution has proved the elements of murder in relation to Milovan Krstić and Miodrag Krstić. There is no evidence before the Chamber that Milovan Krstić or Miodrag Krstić were killed in the Llapushnik/Lapusnik prison camp, by KLA guards from the prison camp, or that they were killed between the dates alleged by the Prosecution in the Indictment, that is, between 24 June 1998 and 26 July 1998. In fact, Slobodanka Krstić heard that Milovan and Miodrag Krstić were alive in August 1998. This, however, was by way of rumour. Further, in November 1998, Slobodanka Krstić’s brother saw a television programme that showed KLA soldiers in Kukes, in Albania. Slobodanka Kr{tic’s brother told her that he recognised Miodrag Krstić among them. Having regard to all the relevant circumstances the Chamber cannot be satisfied that the Prosecution has established that Milovan Krstić and Miodrag Krstić are in fact dead.

344. The elements of the offence of torture (Count 4) have not been established in relation to Milovan Krstić or Miodrag Krstić. Leaving aside the question of the criminal responsibility of the three Accused, the Chamber finds that the elements of the offence of cruel treatment (Count 6) have been established in relation to Milovan Krstić and Miodrag Krstić. The Chamber finds that the elements of the offence of murder (Count 8) have not been satisfied in relation to Milovan Krstić and Miodrag Krstić.

(xi) Slobodan Mitrović

345. Ljiljana Mitrović stated that, on 24 June 1998, Slobodan Mitrović, an ethnic Serb, and his cousin Milovan Krstić collected Miodrag Krstić from a hospital in Belgrade and departed for Reqan/Recane in Kosovo. Ljiljana Mitrović last saw her husband on 23 June 1998 in Arandjelovac. The Serbian authorities told Ljiljana Mitrović that a car matching the description of the Volkswagen Golf in which the men were travelling had been viewed crossing the border at Rurdare/Merdare. Ljiljana Mitrović headed for Kosovo on 25 June 1998, where she was told by Abdyl Kryeziu, from Suhareke/Suva Reka, that her husband and the Krstić brothers had been kidnapped in Carraleve/Crnoljevo and taken in the direction of Malisheve/Malisevo.

346. Slobodan Mitrović was recognised by others as being present at the Llapushnik/Lapusnik prison camp. L07 identified Slobodan Mitrović by photograph as one of the prisoners detained in the storage room at Llapushnik/Lapusnik. Vojko Bakrać stated that he was detained in the storage room with “the Krstić brothers, one of whom was called Slobodan,”1235 although he was unable to identify Slobodan Mitrović by photograph. Documentation belonging to Slobodan Mitrović was apparently found at Llapushnik/Lapusnik.

347. Ivan Bakrać recognised a photograph of Slobodan Mitrović by photograph as one of the persons who was detained in the storage room at the Llapushnik/Lapusnik prison camp. He did not know by name the individual he recognised by photograph. According to Ivan Bakrać, Slobodan Mitrović had a bullet hole in his leg and told him that he had been shot while attempting to flee from a bus that had been stopped by the KLA. This does not accord with the account of Slobodan Mitrović’s apprehension given by Ljiljana Mitrović and Slobodanka Krstić, who both understood that Slobodan Mitrović was travelling by car, not by bus. The Chamber notes that the circumstances which Ivan Bakrać described appear to accord with the Prosecution’s case as to the apprehension and disappearance of Srboljub Miladinović, whom the Prosecution alleges was also detained at the Llapushnik/Lapusnik prison camp. There is obvious uncertainty in the evidence.

348. Despite this, the Chamber is satisfied, on the basis of the evidence, that Slobodan Mitrović was identified as a detainee in the storage room at the Llapushnik/Lapusnik prison camp. The chamber is further satisfied that Slobodan Mitrović was detained in the storage room by the KLA for an undetermined period of time, beginning on 24 June 1998. The Chamber finds that Slobodan Mitrović was not taking any active part in hostilities during that time.

349. As the Chamber has discussed, the conditions in the storage room in the relevant period were such as to constitute the offence of cruel treatment. That aside, there is no evidence that Slobodan Mitrović was subjected to direct mistreatment or torture at Llapushnik/Lapusnik.

350. The Prosecution alleges that Slobodan Mitrović was murdered at the Llapushnik/Lapusnik prison camp sometime between 24 June 1998 and 26 June 1998. The Prosecution asks the Chamber to apply the factors set out in *Prosecutor v. Krnojelac* to the evidence before it. A number of years have elapsed since Slobodan Mitrović disappeared, and he has not contacted his family or others during that time. Further, the Chamber has evidence of the disappearances of others detained at Llapushnik/Lapusnik. Slobodan Mitrović’s wife heard from a man who claimed to have seen Slobodan Mitrović, but this was apparently a hoax. Ljiljana Mitrović testified before the Chamber that she has not seen her husband since his disappearance and was confident that he has been killed. The Chamber has no doubt that Ljiljana Mitrović testified truthfully. However, her evidence does not provide sufficient certainty as to the circumstances of her husband’s possible death so as to establish the elements of the offence of murder as charged.

351. The Chamber concludes that the elements of the offence of torture (Count 4) have not been established in relation to Slobodan Mitrović. Leaving aside the criminal responsibility of the three Accused, the Chamber finds that the elements of the offence of cruel treatment (Count 6) have been satisfied in relation to Slobodan Mitrović. The Chamber concludes that the elements of the offence of murder (Count 8) have not been established in relation to Slobodan Mitrović.

(xii) Miroslav Šuljinić

352. On 21 May 1998, Miroslav Šuljinić, an ethnic Serb, was returning from Doberdoll/Dobri Do to Viteje/Vidanje when he disappeared. Miroslav Šuljinić’s brother, Jeremija Šuljinić, received information from the MUP that, on 21 May 1998, Miroslav Šuljinić had been crossing the MUP Komoran/Komorane checkpoint towards Llapushnik/Lapusnik. His car was allegedly seen by three journalists in Llapushnik/Lapusnik that same day.

353. A note shown to Jeremija Šuljinić by investigators and appended to his written statement states: “I am Šuljinić, Miroslav, born on 08.06.1996 [sic]. Occupation worker. Captured by UČK in Lapošnik [sic] 21.05.1998.” Jeremija Šuljinić stated that he recognised Miroslav Šuljinić’s handwriting.

354. The Prosecution has called only one viva voce witness who was able to testify as to Miroslav Šuljinić presence in Llapushnik/Lapusnik. When shown a photograph of Miroslav Šuljinić, Ivan Bakrać stated that he recognised him as a man who was “always smiling” and who had been travelling in the dark blue Volkswagen Golf with Milovan Krstić. However, according to the written statement of Jeremija Šuljinić, Miroslav Šuljinić was not with Milovan Krstić when he was apprehended; according to Jeremija Šuljinić, Miroslav Šuljinić travelled alone to Doberdoll/Dobri Do to finish some work. Further, Jeremija Šuljinić stated that Miroslav Šuljinić was travelling in a Toyota Corolla, not a Volkswagen Golf. Later in his testimony, Ivan Bakrać was shown a photograph of Miroslav Šuljinić and asked if he recognised him as one of the men Ivan Bakrać spoke to when inquiring about the whereabouts and welfare of Stamen Genov. Ivan Bakrać agreed that Miroslav Šuljinić was one of the men he had spoken to.

355. The Chamber is satisfied that Ivan Bakrać testified truthfully. His recollection of what he was told of the circumstances of Miroslav Šuljinić’s apprehension, however, does not accord with the written statement of Jeremija Šuljinić regarding Miroslav Šuljinić’s apprehension. The Chamber has no adequate basis on which to determine how Miroslav Šuljinić was apprehended. One possibility, therefore, is that Ivan Bakrać misidentified Miroslav Šuljinić. No other *viva voce* witnesses called by the Prosecution have testified to the presence of Miroslav Šuljinić at the Llapushnik/Lapusnik prison camp. Further, the provenance of Miroslav Šuljinić’s purported written statement, identified as such by Jeremija Šuljinić, is unknown. The Chamber is left, therefore, with doubt as to whether Miroslav Šuljinić was detained at the Llapushnik/Lapusnik prison camp.

356. The Chamber therefore concludes that the elements of the offences of torture (Count 4), cruel treatment (Count 6) and murder (Count 8) have not been established in relation to Miroslav Šuljinić.

(xiii) Živorad Krstić

357. According to the written statements of Sne`ana Simonović and Stojan Stojanović, Živorad Krstić, an ethnic Serb, was taken off a bus on 25 June 1998 when returning from Prizren/Prizren to Prishtina/Pristina, after having attended a memorial service for his brother.1254 Stojan Stojanović heard from Živorad Krstić’s nephew that Živorad Krstić was taken off the bus in Carraleve/Crnoljevo. According to Stojan Stojanović, the bus was stopped by soldiers who introduced themselves as members of the KLA. Živorad Krstić’s bag and identification documents were found on the bus. Živorad Krstić was kidnapped with two other unidentified Serbs.

358. Živorad Krstić’s brother in law stated that he met with two men who had been released through the International Committee of the Red Cross. Both men, when shown a photograph of Živorad Krstić, recognised him as having been held in a detention camp with them. The identities of the two men are not made clear in the written statement, but their description and circumstances match those of the Bakrać’s. Sne`ana Simonović, Živorad Krstić’s daughter, in a written statement noted that in October 1998 she was informed by an individual that prisoners at a camp somewhere near Suhareke/Suva Reka told him that there was a man in the camp with the name of Krstić, from Prishtina/Pristina, who had three daughters and was in poor health. Živorad Krstić had three daughters. Vojko Bakrać stated that there was an elderly, sick gentleman detained in the storage room at the Llapushnik/Lapusnik prison camp. He testified that the elderly gentleman had diabetes and had undergone eye surgery shortly before being apprehended. Vojko Bakrać identified Živorad Krstić by photograph as a detainee in the storage room. Vojko Bakrać stated that this elderly man was the only detainee who had grey hair. The written statement of Snežana Simonović confirmed that Živorad Krstić had undergone eye surgery approximately one month prior to his apprehension.1268 In her written statement Snežana Simonović further stated that Živorad Krstić was taking medication for diabetes at the time of his apprehension.

359. The Chamber accepts that Živorad Krstić was detained by the KLA in the storage room at Llapushnik/Lapusnik for an unspecified period of time beginning on 25 June 1998. The Chamber accepts that he was taking no active part in hostilities at the time. The Chamber finds that Živorad Krstić was subjected to cruel treatment due to the general conditions in the storage room. The Chamber has accepted that those conditions were such that detention in the storage room constituted the offence of cruel treatment. The Chamber takes into account, specifically, Živorad Krstić’s age and medical condition at the time of his detention. He was in poor health, suffering from diabetes, and recovering from eye surgery at the time he was apprehended. There is no evidence that Živorad Krstić was subjected to torture at the Llapushnik/Lapusnik prison camp.

360. The Prosecution alleges that Živorad Krstić was murdered between 24 June 1998 and 26 July 1998 at the Llapushnik/Lapusnik prison camp. Again, the evidence relied upon by the Prosecution is circumstantial; the Prosecution invites the Chamber to have regard to the factors in Prosecutor v. Krnojelac.

361. There is no evidence of Živorad Krstić’s direct mistreatment at the Llapushnik/Lapusnik prison camp. Živorad Krstić has not contacted his friends or family since his disappearance. Sne`ana Simonović stated that she was informed that Živorad Krstić was alive in October 1998. In his written statement, Stojan Stojanović stated that Boško Buha told him sometime in 1999 that Živorad Krstić had died.1271 Boško Buha could not tell Stojan Stojanović exactly when Živorad Krstić had died, or the circumstances of his death. However, Stojan Stojanović was told by Boško Buha that Živorad Krstić had died “some time ago.” Stojan Stojanović also heard that Živorad Krstić’s nephews, who had been trying to negotiate Živorad Krstić’s release, were also told that he had died. While these hearsay accounts cannot establish that Živorad Krstić is dead, none of them provides any basis for believing he may still be alive. However, upon the evidence the Chamber finds that it it is unable to conclude, with sufficient certainty, that Živorad Krstić is dead.

362. If it be accepted, for the present, that Živorad Krstić died in the prison camp, two possible inferences would support the offence of murder, namely that he was deliberately killed by an individual or individuals, or that he died because medical care was deliberately withheld. There is insufficient evidence before the Chamber to support the first inference. On the evidence before the Chamber, the element of intent has not been established that would support the second inference. In the circumstances the offence of murder has not been established with respect to Živorad Krstić.

363. The Chamber therefore concludes that the elements of the offence of torture (Count 4) have not been established in relation to Živorad Krstić. Leaving aside the criminal responsibility of the three Accused, the Chamber concludes that the elements of the offence of cruel treatment (Count 6) have been established in relation to Živorad Krstić. The Chamber finds that the Prosecution has not established the elements of the offence of murder (Count 8) in relation to Živorad Krstić.

1. Two of the three accused, Mr Fatmir Limaj and Mr Isak Musliu, were found not guilty on all counts of the indictment. The third accused, Mr Haradin Bala, was found guilty in torture, cruel treatment and murder, but not in relation to Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić.
2. These findings and conclusion of the Trial Chamber were upheld by the Appeals Chamber on 27 September 2007 (IT-03-66-A).
3. **THE COMPLAINTS**
4. The complainants complain about UNMIK’s alleged failure to properly investigate the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić. In this regard the Panel deems that the complainants invoke a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
5. The complainants also complain about the mental pain and suffering allegedly caused to them by this situation. In this regard, they rely on Article 3 of the ECHR.
6. With regard to the case of the alleged fraudulent sale of Mr Živorad Krstić’s immovable property, the Panel has to note that Mrs Snežana Simonović did not expressly raise the issue of adequacy of investigation by UNMIK authorities into this. The Panel therefore does not regard it as a separate complaint.
7. **THE LAW**
8. **Alleged violation of the procedural obligation under Article 2 of the ECHR** 
   1. **The scope of the Panel’s review**
9. 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.
10. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
11. 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.
12. 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.
13. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above (see § 99). In the particular case of killings and disappearances in life-threatening circumstances, it is not the Panel’s role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.
14. 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**
15. The complainants in substance allege violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić. The complainants also state that they were not informed as to whether an investigation was conducted and what the outcome was.
16. The SRSG presented UNMIK’s comments on the merits of the complaints on three occasions: on 7 March 2014 (in relation to the merits of the complaint of Mr Jeremija Šuljinić, case no 276/09), on 9 April 2014 (in relation to the complaints of Mrs Liljana Mitrović, Mrs Danijela Krstić, Mrs Slobodanka Simonović and Mrs Snežana Simonović, cases nos 144/09, 158/09, 209/09 and 210/09 no. 258/09) and on 16 July 2014, with respect to the merits of the six joined complaints (see §§ 16, 19 and 25 above).
17. The SRSG generally notes that in this case UNMIK has been able to obtain copies of relevant files previously held by the OMPF and UNMIK Police WCIU. In addition, UNMIK’s comments on the complaints were “also based in part on the … documents of the ICTY publically available from the Tribunal’s website.”
18. The SRSG also submits that, as UNMIK handed over all investigative files to EULEX, it “ceased to be the custodian of police records in Kosovo and could not, as a matter of principle, retain copies of classified and on-going police investigation files.” According to the SRSG, upon UNMIK’s request, and based on its own assessment, EULEX “may, or may not, release … such investigative records.” Therefore, according to the SRSG, “a failure to transmit a complete investigation file to the HRAP cannot lead the HRAP to the irrebutable presumption that UNMIK failed to carry out a proper investigation.”
19. In his comments on the merits of the complaint under Article 2, the SRSG states that the complainants’ relatives disappeared in life threatening circumstances, around the same time, prior to the adoption of the UNSC Resolution No. 1244 (1999) establishing UNMIK. He notes that at that time the security situation in Kosovo was extremely tense and there was a high level of violence all over Kosovo due to the on-going armed conflict. Soon after the establishment of UNMIK in June 1999, the security situation remained tense, as “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.”
20. The SRSG accepts UNMIK’s responsibility to conduct an investigation in the cases of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić under Article 2 of the ECHR, procedural part, starting from 11 June 1999. In the words of the SRSG, “the essential purpose of such investigation [was] to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”
21. The SRSG notes that the complainants do not allege a violation of the substantive part of Article 2, but rather of its procedural element. The SRSG states that “the procedural element of Article 2 is essentially two-fold: (i) an obligation to determine through investigation the fate and/or whereabouts of the victim; and (ii) an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the victim.”
22. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources. Furthermore, after a long and brutal war, Bosnia and Herzegovina underwent fundamental overhaul of its internal structure and political system: Entities and Cantons were set up pursuant to the Dayton Peace Agreement, power-sharing arrangements were introduced in order to ensure effective equality between the “constituent peoples” in the post-conflict society (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos 27996/06 and 34836/06, ECHR 2009‑...), new institutions had to be created and the existing ones had to be restructured. Some reluctance on the part of the former warring parties to work with those new institutions could be expected in the post-war period, as evidenced in the present case. While it is difficult to pinpoint when exactly this process ended, the Court considers that the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005, following comprehensive vetting of the appointment of police and judiciary and the establishment of the War Crimes Sections within the Court of Bosnia and Herzegovina.

All this considered and since there has been no substantial period of inactivity post-2005 on the part of the domestic authorities in the present case, the Court concludes that, in the circumstances obtaining at the material time, the domestic criminal investigation can be considered to have been conducted with reasonable promptness and expedition”.

1. In the view of the SRSG, UNMIK was faced with a very similar situation in Kosovo “from 1999 to 2008” as the one in Bosnia “from 1995 to 2005”. The SRSG states that thousands of people were displaced or went missing during the Kosovo conflict. Many of the persons who went missing were abducted, killed, and buried in unmarked graves inside or outside Kosovo, which made it 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 the 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, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština. The SRSG states that, in the effort to demonstrate that crimes were systematic and widespread, the ICTY teams conducted autopsies on as many bodies as possible, carrying out little or no identification work; moreover, unidentified bodies exhumed in 1999 were reburied in locations still unknown to the OMPF. After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “*ex-officio*, without any broader prosecutorial strategy”. As a consequence, a large amount of unstructured information was collected.
3. The SRSG states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is “testament to the vigour of its work between 2002-2008” and that “more bodies continued to be located in burial sites and more identifications and returns to family members are taking place, often based on information contained in UNMIK-OMPF files”. The SRSG continues that “therefore, it is apparent 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 rather than just UNMIK, for example the International Commission on Missing Persons, the International Committee of the Red Cross and local missing persons organisations.”
4. The SRSG further argues that fundamental to conducting effective investigations is a professional, well trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task, which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

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

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

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to the crime. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and culture, with limited support from the still developing Kosovo Police.
2. He further states that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
3. Further, with regard to all cases, the SRSG provides a brief overview of the actions undertaken by UNMIK authorities and the available investigative documents (see §§ 66 - 128 above). He then proceeds to justify the primacy jurisdiction of the ICTY over the investigations subject of this case.
4. In this regard, the SRSG, first, states the fact that Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić are all mentioned as alleged victims in the ICTY indictments in the case IT-03-66 against Fatmir Limaj, Haradin Bala and Isak Musliu, however, the Tribunal did not find any of the accused guilty of their abduction and disappearance (see § 129 - 133 above).
5. Citing the ICTY Prosecutor’s press release of 29 September 1999, the SRSG adds that: “[i]t is clear that OTP [Office of the Prosecutor] 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.”
6. In the SRSG’s view, the investigation and prosecution in the case of *Fatmir Limaj et al* was considered by the ICTY as falling directly within the scope of its investigative priorities. The accused in that case had been specifically indicted for the instigation, ordering and planning of the murders of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić, who were allegedly killed by the KLA at the Llapushnik/Lapušnik Prison Camp between 24 June and 25 July 1998. However, the SRSG also states that it is not possible to determine from the documents available to UNMIK whether any formal request for deferral of the investigation to ICTY jurisdiction, pursuant to Rules 8 - 10 of the the ICTY Rules of Procedure and Evidence (RoP), was made by the ICTY to UNMIK. However, in the SRSG’s view, “where ICTY asserts its primacy, by seizure of a particular case for which formal proceedings have not already commenced in a national court, there would be no legal requirement to request national court to defer competence, neither there would be the risk of offending due process […]”
7. The SRSG, referring to the ECtHR Case *Brecknell v. United Kingdom*, also argues that “[t]here is no absolute right … to obtain a prosecution or conviction … and the fact that an investigation ends without concrete, or with only limited, results is not indicative of any failings as such. The obligation [under Article 2 of the ECHR] is of means only.” In the SRSG’s view, the essential purpose of Article 2 of the ECHR in this case has been satisfied. He further states that “any suggestion that obligation remained on UNMIK with respect to the conduct of separate criminal proceedings simultaneously with those commenced by the ICTY, raises the danger of Complainants, unhappy with the outcome of the competent legal proceedings, simply pursuing remedies from other competent authorities by asserting a failure to act with respect to the same proceedings.”
8. The SRSG therefore concludes that UNMIK authorities acted fully in accordance with the procedural requirements of Article 2 of the ECHR, in relation to all victims in this case.
   1. **The Panel’s assessment**
9. The Panel considers that the complainants invoke 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 abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić.
10. *Submission of relevant files*
11. The SRSG observes that all available files regarding the investigation have been presented to the Panel. Furthermore, on 21 February 2014, UNMIK confirmed to the Panel that the disclosure may be considered complete (see § 23 above).
12. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the 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).
13. 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.
14. 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).
15. *General principles concerning the obligation to conduct an effective investigation under Article 2*
16. The Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights *Velásquez-Rodríguez* (see Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The positive obligation has also been stated by the HRC as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Article 2(3) (right to an effective remedy) of the ICCPR(see HRC, General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.
17. In order to address the complainants’ allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
18. The European Court has also stated that the procedural obligation to provide some form of effective official investigation exists also when an individual has gone missing in life-threatening circumstances and is not confined to cases where it is apparent that the disappearance was caused by an agent of the State (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 131 above, at § 136; ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
19. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310; see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210; ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).
20. Setting out the standards of an effective investigation, the Court has stated that “beside being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC]*, Varnava and Others v. Turkey*, cited in § 102 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312; and *Isayeva v. Russia*, cited above, at § 212).
21. The European Court has also stressed that “The requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow offences concerning violent deaths to go unpunished” (ECtHR, *Jelić v. Croatia*, no. 57856/11, judgment of 12 June 2014, § 77).
22. The ECtHR further stated in this respect that “among the main purposes of imposing criminal sanctions are retribution as a form of justice for victims and general deterrence aimed at prevention of new violations and upholding the rule of law. However, neither of these aims can be obtained without alleged perpetrators being brought to justice. Failure by the authorities to pursue the prosecution of the most probable direct perpetrators undermines the effectiveness of the criminal-law mechanism aimed at prevention, suppression and punishment of unlawful killings” (ECtHR, *Jelić v. Croatia*, cited above, § 90).
23. 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 § 169 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see ECtHR [GC], *El-Masri v. “the Former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 170 above, at § 322).
24. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECHR 2002‑II; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 170 above, at § 323).
25. Specifically with regard to persons disappeared and later found dead, which is not the situation in this case, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that “the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 172 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 § 172 above, at § 64).
26. 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 § 171 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 171 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 170 above, at § 324).
27. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri,* cited in § 175 above, at § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5;see also HRC,  *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives, UN Document A/HRC/22/52, 1 March 2013, § 23-26).
28. *Applicability of Article 2 to the Kosovo context*
29. The Panel is conscious of the fact that the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić took place about a year prior to the deployment of UNMIK in Kosovo, during the armed conflict, when crime, violence and insecurity were rife.
30. Nevertheless, 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.
31. 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.
32. 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).
33. 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 § 172 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 § 178 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 § 171 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 171 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39 – 51; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 170 above, at § 319).
34. 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 § 169 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 § 171 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
35. 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 § 168 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).
36. 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 § 35 above).
37. 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 § 172 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
38. 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.
39. 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.
40. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel’s jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight; failure to provide family members with minimum necessary information on the status of the investigation  (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 177 above, at § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK’s failures, which persisted throughout the period of the Panel’s jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.
41. *Compliance with Article 2 in the present case*
42. Turning to the particulars of this case, the Panel first notes that there is certain evidence of the investigation conducted by UNMIK authorities into the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić. However, the Panel also notes that all of those investigative actions, with exception of the investigation by UNMIK IP and WCIU in 2006 – 2008 (see §§ 89 - 110 above), lay outside of the Panel’s temporal jurisdiction (see § 140 above).
43. In this particular case, it is clear that the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić were the subject of an ICTY investigation in the case no. IT-03-66, *Limaj et al* (see § 129 - 133 above). The indictment in this case, filed by the OTP on 24 January 2003, charged the accused with instigation, ordering and planning of their murders, while they were detained by the KLA. However, on 27 September 2007, the ICTY Appeals Chamber found all accused to be not guilty with regard to the alleged crimes, including those against the complainants’ relatives.
44. 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.
45. 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” (see § 159 above). In addition, 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 [RoP].”[[19]](#footnote-19)
46. In the Panel’s view, the “primacy” of the ICTY’s jurisdiction is not absolute. Indeed, Rules 8 - 10 of the ICTY’s 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.
47. 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.
48. 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. Moreover, even in 2006 - 2008, while the UNMIK Police WCIU and the IP investigated the alleged fraudulent sale of Mr Živorad Krstić’s property, appeared not to be aware of the existing ICTY proceedings (see 89 - 97 above). The first time the ICTY’s possible involvement in this matter is seen in the UNMIK Police’s request for information in relation to this victim to the ICTY, dated 20 June 2008 (see § 99 above), to which the ICTY responded positively (see § 109 above).
49. In this respect, the Panel also notes with concern UNMIK’s submission that no record of any formal request of such nature was submitted by the ICTY, or even had to be submitted (see § 160 above). Thus, it appears that UNMIK’s investigative files might have been simply subject of a “seizure” 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.
50. 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.”[[20]](#footnote-20) Subsequently, on 31 December 2012, the ICTY OTP field office in Prishtinё/Priština was completely closed.[[21]](#footnote-21)
51. Thus, in the Panel’s view, it is not excluded that the ICTY had also conducted its independent investigation into the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić, as a part of its wider investigation in the case *Limaj 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.
52. Although the Panel was not presented with any evidence as to when the ICTY assumed primacy over these investigations, it is known that on 24 January 2003 the ICTY OTP filed the first indictment in the case IT-03-66, listing Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić as among the Serb detainees allegedly killed by the KLA at its camp in Llapushnik/Lapušnik. Therefore, it is clear that by January 2003 at the latest, the ICTY had assumed full control of these investigations.
53. It is also the Panel’s position that 27 September 2007, the date when the ICTY Appeals Chamber delivered its judgment in the case *Limaj et al* (IT-03-66-A), might reasonably be considered as the end of the ICTY judicial proceedings. None of the accused in the case IT-03-66 was found to be guilty of the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić.
54. 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).
55. In this respect, the Panel recalls that the European Court of Human Rights 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” (ECtHR, *Brecknell v. the United Kingdom,* cited in § 188 above, at § 69). It also recalls that the ECtHR stressed that the effective investigation should cover “not only those having the command responsibility but direct perpetrators as well in order to prevent any appearance of tolerance of or collusion in unlawful acts” (ECtHR, *Jelić v. Croatia*, cited in § 173 above, at § 94).
56. Therefore, considering the fact that neither the mortal remains of the victims have been located nor those responsible for their abduction and disappearance have been brought to justice, the Panel concludes that the procedural obligation under Article 2 of the ECHR was not discharged and should have been continued, although a long time had passed from the alleged crimes.
57. In the Panel’s view, after the ICTY Appeals Chamber’s decision in September 2007, in accordance with the continuous obligation to investigate, the competence to do so should have been formally transferred back to UNMIK. Then it would be for the UNMIK 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.
58. UNMIK’s subsequent action in relation to this investigation can be examined by the Panel, as it falls within the period of the Panel’s temporal jurisdiction. However, the period of the Panel’s review in this situation ends on 9 December 2008, when with EULEX assumed full operational control in the area of the rule of law (see § 37 above). The action of authorities, other than UNMIK, after that time does fall outside the Panel’s jurisdiction (see §§ 140 - 142 above).

1. The Panel notes that it is not clear whether the authority to continue the investigations into abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić, together with the investigative files, were officially transferred from ICTY back to UNMIK, and if so, when such transfer took place. Nevertheless, the documents presented to the Panel show that some investigative action was undertaken by UNMIK IP and WCIU, in an attempt to link the alleged fraudulent sale of of Mr Živorad Krstić’s immovable property to his abduction (see §§ 89 - 110 above), although without a satisfactory conclusion.
2. In any event, the Panel considers that the one-year period from September 2007 (deemed as the end of the ICTY’s jurisdiction over these investigations) until December 2008 (the end of UNMIK’s executive authority in Kosovo), is an insufficient period for any assessment of an adequacy of the investigation by UNMIK. Therefore, the Panel has no grounds for finding a violation of Article 2 of the ECHR on the part of UNMIK.
3. 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 abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić and bring them to justice. However, the Panel reiterates that the obligation to continue with the investigation in this case in accordance with the procedural requirements of Article 2 of the Convention still exists, although falling outside the jurisdiction of the Panel to consider further.
4. Although not within the parameters of this case, the Panel also notes with concern the alleged fraudulent sale of Mr Živorad Krstić’s immovable property (see §§ 89 - 112 above) and the issue of the sizeable number of such fraudulent transactions of the immovable property of the deceased and displaced persons in Kosovo after the territory came under control of UNMIK[[22]](#footnote-22).
5. Having considered all aspects of this case, the Panel concludes that, in so far as this investigation is attributable to the UNMIK authorities, there has been no violation of Article 2, procedural limb, of the ECHR.
6. **Alleged violation of Article 3 of the ECHR**
7. The complainants state that the lack of information and uncertainty surrounding the abduction and disappearance of Mr Slobodan Mitrović, Mr Milovan Krstić, Mr Miodrag Krstić, Mr Živorad Krstić and Mr Miroslav Šuljinić caused mental suffering to themselves and their families. The Panel considers in this respect that the complainants invoke Article 3 of the ECHR prohibiting inhuman and degrading treatment.
8. **The scope of the Panel’s review**
9. 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 §§ 137 - 142 above).
10. 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 § 185 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 172 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).
11. 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).
12. **The Panel’s assessment**
13. 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.
14. 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.
15. The Panel has no doubts as to the profound suffering caused by this situation to the complainants, who continue to live in an uncertainty about the fate of their close relatives. 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 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 THE SUBSTANTIVE OBLIGATION UNDER 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 -** 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** **-** ICTY Office of the Prosecutor

**RIU** **-** Regional Investigation Unit

**RoP** **-** 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

**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; Humanitarian Law Centre, *“Abductions and Disappearances of non-Albanians in Kosovo”* (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos 71412/01 and78166/01, decision of 2 May 2007; International Commission on Missing Persons, *“The Situation in Kosovo: a Stock Taking”* (2010); data issued by the United Nations High Commissioner for Refugees, (available at [www.unhchr.org](http://www.unhchr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>). [↑](#footnote-ref-2)
3. The ICRC database is an electronic source available at: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 10 November 2014). [↑](#footnote-ref-3)
4. The OMPF database is an electronic source not open to public. The Panel accessed it with regard to this case on 11 November 2014. [↑](#footnote-ref-4)
5. The ICMP database is an electronic source available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 10 November 2014). [↑](#footnote-ref-5)
6. Accessed on 10 November 2014. [↑](#footnote-ref-6)
7. Accessed on 11 November 2014. [↑](#footnote-ref-7)
8. Accessed on 10 November 2014. [↑](#footnote-ref-8)
9. Accessed on 10 November 2014. [↑](#footnote-ref-9)
10. Accessed on 11 November 2014. [↑](#footnote-ref-10)
11. Accessed on 10 November 2014. [↑](#footnote-ref-11)
12. Accessed on 10 November 2014. [↑](#footnote-ref-12)
13. Accessed 11 November 2014. [↑](#footnote-ref-13)
14. Accessed on 10 November 2014. [↑](#footnote-ref-14)
15. Accessed on 10 November 2014. [↑](#footnote-ref-15)
16. Accessed on 11 November 2014. [↑](#footnote-ref-16)
17. Accessed on 10 November 2014. [↑](#footnote-ref-17)
18. This information was obtained by the Panel from the publicly available HPD/HPCC webpage [electronic source] at http://www.kpaonline.org/hpd/index.htm (accessed on 19 November 2014). [↑](#footnote-ref-18)
19. 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 Official Webpage [electronic source] - http://www.icty.org/sid/7733 (accessed on 10 November 2014). [↑](#footnote-ref-19)
20. See: *Tribunal closes field offices in Croatia and Kosovo* // ICTY Official Webpage [electronic source] - http://www.icty.org/sid/11180 (accessed on 8 November 2014). [↑](#footnote-ref-20)
21. See: Ibid. [↑](#footnote-ref-21)
22. See further on this issue: *Property Rights in Kosovo: A Haunting Legacy of a Society in Transition (2009)*, International Center for Transitional Justice, p. 13 // ICTJ webpage [electronic source] - https://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Kosovo-Legacy-2004-English.pdf (accessed on 11 November 2014); Kasapolli V. *Kosovo's stolen properties* // Osservatorio Balcani e Caucaso webpage [electronic source] - http://www.balcanicaucaso.org/eng/Regions-and-countries/Kosovo/Kosovo-s-stolen-properties-48031 (accessed on 11 November 2014). [↑](#footnote-ref-22)