



2 March 2015

## PRESS RELEASE

### **The Human Rights Advisory Panel adopted its opinion in the case *Kadri Balaj, Shaban Xheladini, Zenel Zeneli and Mustafë Nerjovaj against UNMIK* (no. 04/07)**

On 27 February 2015, during its 80<sup>th</sup> session held in Prishtinë/Priština, the Human Rights Advisory Panel (the Panel) adopted its opinion concerning the case of *Balaj and others v. UNMIK*.

The complaint filed by the complainants was related to the actions of UNMIK Police on the occasion of a demonstration organised by Vetëvendosje movement, which took place in Prishtinë/Priština, on 10 February 2007. As a result of these actions, Mr Mon Balaj, the son of the first complainant, and Mr Arben Xheladini, the son of the second complainant, were killed and other demonstrators were wounded, some seriously, including Mr Zenel Zeneli and Mr Mustafë Nerjovaj, the third and fourth complainants.

The complainants in substance claimed that the killing of Mr Mon Balaj and Mr Arben Xheladini and the serious injury to Mr Zenel Zeneli and Mr Mustafë Nerjovaj constituted violations of the right to life and the right to peaceful assembly. They also claimed that there has been no effective investigation into the incident, resulting in a violation of the procedural aspect of the right to life. Finally, they claimed that by not being able to bring a claim against UNMIK before a court or before any other body capable of providing redress, their rights to a fair trial and to an effective remedy have been violated.

The Panel considered the complaint under the European Convention on Human Rights (ECHR), Articles 2 (the right to life), 6 (the right to a fair trial), 11 (the right to peaceful assembly) and 13 (right to an effective remedy).

The Panel found, first, that in the circumstances of this case the force used to disperse the demonstrators, which caused the deaths of Mr Mon Balaj and Mr Arben Xheladini and injuries to Mr Zenel Zeneli and Mr Mustafë Nerjovaj, was not absolutely necessary within the meaning of Article 2(2) of the ECHR. Therefore, the Panel found that there was a violation of the substantive limb of Article 2 of the ECHR.

In addition, the Panel found that, although the investigation into the circumstances leading to those tragic consequences was prompt, it did not display sufficient guarantees of independence and impartiality and did not satisfy the requirement of thoroughness. Thus, the Panel considered that there are serious reasons to doubt whether the investigation was capable of finding those responsible and bringing them to

justice. Therefore, the Panel concluded that UNMIK failed to carry out an effective investigation into the matter, in violation of the procedural limb of Article 2 of the ECHR.

In relation to the complaints under Article 6 and Article 13 of the ECHR that no remedies were available to the complainants and that they did not have any other means of redress, the Panel, in light of its findings concerning the procedural aspect of Article 2 of the ECHR and considering that the complainants resorted to the UN Third Party Claims Process, found it unnecessary to examine this part of the complaint separately.

Finally, the Panel found that the forceful intervention of the police officers was disproportionate and not necessary in a democratic society for the prevention of disorder in violation of Article 11(2) of the ECHR.

The Panel recommended UNMIK to publicly acknowledge its responsibility with respect to the identified violation of Articles 2 and 11 of the ECHR and make a public apology to the complainants in this regard, as well as taking appropriate steps towards payment of adequate compensation to the complainants for the moral damage they had suffered.

The Panel further recommended, in case the investigation into this matter is reopened, that UNMIK ensures provides all necessary assistance to any authority investigating this matter, in line with the Resolution of the UN General Assembly 66/93, adopted on 9 December 2011, on the *Criminal Accountability of the United Nations officials and experts on mission*.

The Panel also considered appropriate that UNMIK takes steps before competent bodies of the UN, including the UN Secretary-General, to ensure that in all instances of use of force in UN peacekeeping operations, all members of UN Civilian Police fully comply with international standards and that the general international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory.

The text of the opinion is currently available only in [English](#). The Albanian and Serbian versions will be made available after translation.

---

This press-release is a document produced by the Panel's Secretariat. It does not bind the Panel. For further information, please contact Mr Andrey Antonov, Executive Officer of the Panel's Secretariat, via e-mail: [antonov@un.org](mailto:antonov@un.org), phone: +381 (0)38 504 604 ext. 5847.

The Panel was set up in Prishtinë/Priština by the UNMIK in 2006, to consider complaints of alleged violations of human rights attributable to UNMIK.

Decisions, opinions and further information about the Panel can be found on its webpage: [www.unmikonline.org/hrap](http://www.unmikonline.org/hrap)