



The Human Rights Advisory Panel

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Annual Report 2011



Foreword

In the fourth year of its activities, the Human Rights Advisory Panel continued its general mission in accordance with UNMIK Regulation 2006/12. As in 2010, the Panel issued many important decisions and opinions, consolidating its jurisprudence and responding to new human rights accountability issues arising in the cases under review. The outcome of the Panel and the Secretariat's work is presented in detail in this report.

Co-operation between UNMIK and the Panel continued smoothly. Despite the large number of complaints that were communicated to the Special Representative of the Secretary-General (SRSG) in various stages of proceedings with requests for UNMIK's comments, the Panel received the responses on time and professionally prepared. The Panel also greatly appreciates the efforts made by UNMIK to provide the Panel with any required documentation, especially police files and other files concerning investigations into the cases of murdered and missing persons. However, access to these files, the majority of which are currently in the possession of the EULEX Mission in Kosovo, does not always depend solely on UNMIK's efforts. Over the course of the year, the Panel was informed that UNMIK had experienced numerous problems accessing its former files, a situation that is still far from being resolved. Without having access to the full files, as they existed during the time when UNMIK was responsible for the investigations, the Panel cannot properly fulfil its mandate.

While emphasising the good co-operative relationship with UNMIK, the Panel must also note that for some time now the SRSG has failed to react to opinions issued by the Panel in the manner required by Regulation 2006/12.

The Panel cannot always rely solely on information and materials received from complainants and UNMIK; in many cases it is also necessary to request information from various other international and local institutions operating in Kosovo. Over the past year, as in previous years, the Panel has generally been able to count on their good co-operation. In this context, the Panel records its appreciation to the Kosovo Property Agency, the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, the regular courts, as well as the District Public Prosecutor's Office in Prishtinë/Priština. Without such co-operation, a proper review of numerous cases would have been very difficult, if not impossible.

During the past year, the Panel, based on its prior experience, made various improvements to its internal working procedures during its monthly sessions in Prishtinë/Priština. It has made more use of electronic means of communication in the periods between its sessions, in order to discuss case strategy and to adopt decisions. These changes have allowed the Panel to process cases in a more efficient manner and have improved its overall productivity.

Staff shortages in the Panel's Secretariat and the frequent turnover among the legal officers within the Secretariat have continued to constitute a significant problem. Staff turnover always hinders the course and continuity of work; however, the problem is all the more acute given the small size of this team.

In order to partially improve this situation, the Panel has sought to obtain financing from donor states, as it has long been obvious that it is too difficult to fill the gaps in the Secretariat's staffing within the strictures of UNMIK's budget. In 2009, as a result of such efforts, the Panel had the assistance of a lawyer seconded by the Finnish government. In 2010, Sweden agreed to provide assistance, and as the result of an agreement reached between the government of Sweden and UNDP, another lawyer commenced work in the Panel's Secretariat. However, that agreement only covered the time-period from May 2011 to January 2012. Due to the Swedish government's exceptional understanding of the Panel's needs and its significance to the protection of human rights in Kosovo (for which we are extremely grateful), this financial assistance has been extended for a further year. Nevertheless, as the Panel already highlighted in previous reports, the number, labour-intensiveness and complexity of the cases still demand the addition of a significantly greater number of legal personnel to the HRAP's Secretariat. Along with numerous other factors, a lack of such personnel prolongs the time it takes for the Panel to complete its cases and, consequently, extends the period until the Panel will be able to finalise its workload and conclude its activities.

Because of the large volume of cases regarding complaints about a lack of proper and effective investigations involving murdered or missing persons (and the very important nature of these cases), the Panel devotes a greater part of its time and effort to such complaints. 2011 saw the Panel making considerable efforts to communicate to the SRSG the vast majority of these cases and to issue the highest possible number of admissibility decisions following their review. The Panel's goal was to collect all obtainable materials from a sufficiently large number of such cases so as to better understand their typology and the kind of specific issues that the Panel will have to address on the merits. Once the Panel has a full view of the documentation that it may expect to receive, it will then commence an in-depth reflection of the relevant issues before drafting the final opinions on the merits in these cases.

Marek Nowicki
Presiding member
Human Rights Advisory Panel
March 2012

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1. Introduction

1. The Human Rights Advisory Panel (the Panel), established by UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 23 March 2006,¹ continued to examine complaints of alleged human rights violations committed by or attributable to the United Nations Interim Administration Mission in Kosovo (UNMIK) throughout its fourth full year of operation in Prishtinë/Priština, Kosovo. The Panel remains the only mechanism that deals with human rights violations allegedly committed by or attributable to a United Nations field mission. Although the Panel cannot order compensation or specific relief, it can however determine whether UNMIK is responsible for a violation of human rights and, if so, it may make recommendations to the Special Representative of the Secretary-General (SRSG) in Kosovo.

2. As the Panel was fully constituted for all of 2011, it was able to have its most successful year to date in processing complaints. This annual report covers the period beginning 1 January 2011 and ending 31 December 2011, during which time the Panel conducted 11 sessions, received no new complaints,² and communicated 117 cases to the SRSG for comments on the admissibility and/or merits of the complaints. During 2011, the Panel also adopted 6 opinions on the merits (concerning 46 complaints), found a further 114 complaints admissible or admissible in part, declared 50 complaints inadmissible and struck 2 complaints from the list. Out of a total of 526 registered complaints, a few of which involved large numbers of named complainants, a total of 164 are closed, while the remaining 362 complaints are pending at various stages of the proceedings. The Panel is still awaiting UNMIK's public responses to the recommendations made by the Panel to date.

3. In 2011, the Panel and the Secretariat received funding from the Swedish government to hire an additional lawyer for a period of eight months whose contract was managed by the United Nations Development Programme (UNDP). The Swedish government subsequently agreed to fund a Secretariat staff member for another twelve month period, again under the management of UNDP. The staff member will come on board in early 2012. In addition, UNMIK's Division of Mission Support renewed its contract with the Secretariat for the outsourcing of non-confidential translations in order to decrease the backlog of pending translations.

4. The Panel met with their counterparts from the EULEX Human Rights Review Panel to discuss issues of mutual interest. On behalf of the Panel, the Secretariat liaised with the Office of the High Commissioner for Human Rights in Kosovo, Amnesty International and Human Rights Watch. In addition, members of the Panel and the Secretariat gave presentations to visiting students from the European Master's Degree in Human Rights and Democratisation, based in Venice.

¹ Attached as Annex A.

² Pursuant to UNMIK Administrative Direction No. 2009/1 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, the time frame for the Panel receiving complaints ended on 31 March 2010.

2. Composition of the Panel

2.1. Panel Members

5. The three Panel members, nominated by the President of the European Court of Human Rights and (re-)appointed by the SRSG in accordance with UNMIK Regulation No. 2006/11 as of 1 January 2011 were Mr Marek Nowicki (Poland), Mr Paul Lemmens (Belgium), and Ms Christine Chinkin (United Kingdom/Australia). The Panel elected Mr Marek Nowicki as its Presiding Member in January 2008 and re-elected him as its Presiding Member in 2009, 2010, and 2011.³

6. Biographical information is provided hereunder on the members of the Panel.

7. **Marek A. Nowicki** (January 2007- present) is a Polish citizen and a human rights lawyer, and a member of the Warsaw Bar Chamber since 1987.

8. Mr Nowicki was the United Nations-appointed international Ombudsperson in Kosovo from July 2000 to December 2005. He was a member of the European Commission of Human Rights in Strasbourg from March 1993 until 31 October 1999 and he was the Polish member of the European Union Network of Independent Experts on Fundamental Rights from March 2003 to September 2006. In 2005 he was nominated by the Committee of Ministers as one of three candidates for the post of the Commissioner for Human Rights of the Council of Europe.

9. Mr Nowicki was one of the “eminent lawyers” appointed by the Parliamentary Assembly of the Council of Europe to assess the legal and human rights situation in Moldova (1994) and Azerbaijan (1997). In 1996 and 1998, the Council of Europe asked him to serve as a human rights expert during the evaluation of the compatibility of the legal systems of Georgia and the Russian Federation with the standards of the European Convention on Human Rights. He served as a human rights expert for the European Commission for Democracy through Law (Venice Commission) and the Directorate General of Human Rights and Legal Affairs of the Council of Europe.

10. Mr Nowicki was a founding member of the Helsinki Foundation for Human Rights in Warsaw and its president from November 2003 until February 2008. He is a member of the Advisory Council of the International Centre for the Legal Protection of Human Rights in London (INTERIGHTS). Mr Nowicki is the author of dozens of books and hundreds of articles on human rights published in Poland and abroad. He also lectures on human rights at the “Collegium Civitas” University in Warsaw.

11. **Paul Lemmens** (January 2007- present) is a Belgian citizen and a judge in the Council of State of Belgium, a post that he has held since 1994. He has served both in the Council of State’s consultative section that examines the compatibility of draft legislation and draft regulations with higher norms of international and national law and in the Council of State’s contentious section, which constitutes the Supreme Administrative Court of Belgium.

³ HRAP Rules of Procedure, Rule 6.

12. Since 1986, Mr Lemmens has also been a professor at the University of Leuven where he lectures in international human rights law. He has also taught constitutional law, civil procedure and administrative procedure. He is the author of a number of books and articles on European human rights law. He is the Belgian director of the European Master's Degree in Human Rights and Democratisation, a European inter-university programme based in Venice, Italy. Mr Lemmens was a member of the Belgian Data Protection Commission from 1987 until 1997 and he has served as a member of the National Commission for the Rights of the Child since 2007. He was an expert for the Council of Europe on the study of the compatibility of certain national systems (Central and Eastern European States) with the European Convention on Human Rights during the 1990s. He was senior expert for Belgium in the legal group of experts of the European Union Fundamental Rights Agency (FRALEX).

13. **Christine Chinkin** (February 2010- present) a dual British/Australian citizen, Fellow of the British Academy, is currently Professor in International Law at the London School of Economics and a William C Cook Global Law Professor at the University of Michigan Law School. She is a member of the Bar of England and Wales and an academic member of Matrix Chambers. She has degrees in law from the Universities of London, Yale and Sydney and has previously held full-time academic posts at the Universities of Oxford, London, Sydney and Southampton, New York Law School and the National University of Singapore.

14. Ms Chinkin's main interests are in public international law, especially the law of treaties, human rights, with emphasis on the international protection of women's rights, and international organisations, and domestic and international dispute resolution. She is the author of many articles on issues of public international law and women's human rights, of Halsbury's Laws of Australia, Title on Foreign Relations (2nd edition 2001), Third Parties in International Law (1993), co-author of Dispute Resolution in Australia (2nd edition 2002), co-author of The Boundaries of International Law: A Feminist Analysis (2000) and co-author of The Making of International Law (2007). She is Director of Studies of the International Law Association. In April 2001 she was awarded the American Society of International Law's Certificate of Merit for 'outstanding contribution to scholarship' and in 2006 the Society's Goler T. Butcher Medal 'for outstanding contributions to the development or effective realization of international human rights law' (with H. Charlesworth).

15. Ms Chinkin has been a consultant on international law to the Asian Development Bank; on trafficking in women to the UN Office of the High Commissioner on Human Rights; on Peace Agreements and Gender to the UN Division for the Advancement of Women and UNIFEM. She was a Scientific Expert to an Ad Hoc Committee of the Council of Europe on the drafting of the 2011 Convention on Violence against Women and Domestic Violence. She was a Member of the Fact-Finding Mission to Beit Hanoun pursuant to United Nations Human Rights Council Resolution S 3/1, May 2008 and of the UN Fact-Finding Mission on the Gaza Conflict in 2009.

2.2. Secretariat Staff

16. The Secretariat Staff consists of an Executive Officer, two legal officers and two administrative assistants. Biographical information is provided hereunder on Secretariat Staff who served during 2011.

2.2.1. Members of the Secretariat at the end of 2011

17. **Andrey Antonov**, a Russian citizen, joined the Secretariat in June 2011 as Executive Officer. Previously, Mr Antonov worked as an Investigator with the Investigation Division of the Office of Internal Oversight at the UN HQ (2011), as a Conduct and Discipline Officer at the United Nations Mission in Sudan (2009-2011), as the Legal Advisor at the United Nations Integrated Office in Sierra Leone (2008-2009), as a legal officer with the Criminal Division of the Department of Justice (DOJ) of the United Nations Mission in Kosovo (UNMIK) (2005-2008), and as a legal officer at the Judicial Integration Section of UNMIK's DOJ (2003-2005). Before joining the United Nations, Mr Antonov served with the Russian Ministry of Internal Affairs (MIA), as a criminal investigator (transport police department, Anapa, 1999) and a lecturer/senior lecturer in Criminal Procedure and Criminal Investigation (Krasnodar University, Russian MIA, 1999-2003). He first arrived in Kosovo in 2000 as a member of the Russian Contingent seconded by the Russian MIA to serve with UNMIK Police, where he worked as a legal officer at UNMIK's Police Commissioner's Legal Office until 2002. Since 1999, Mr Antonov holds a PhD in Law, specializing in Criminal Procedure, Criminal Investigation and Crime Detection, from Volgograd Law Academy of the Russian MIA, and, since 1996, an LLM in the same legal field, obtained in 1996 from the Volgograd Law Academy of the Russian MIA. Additionally, he has authored more than 20 publications in Russian specialist periodicals related to different aspects of criminal investigations.

18. **Anna Maria Cesano**, Anna Maria Cesano, an Italian citizen, joined the Secretariat in May 2011 as human rights specialist on secondment from UNDP and through funding provided by the Swedish Government. Previously, Ms Cesano worked as a rule of law officer at the Access to Justice Programme of the United Nations Development Programme in Sierra Leone (2010-2011), as a liaison officer at the United Nations High Commissioner for Refugees in Tanzania (2009) and as a human rights officer at the United Nations Integrated Office in Sierra Leone (2007-2009). Before joining the United Nations, Ms Cesano worked at the University of Siena, Italy (2006-2007) as a researcher on the European system for the protection of human rights. Ms Cesano first worked in the Balkans in 2005 with the Organization for Security and Cooperation in Europe, Serbia and Montenegro. She holds a Masters Degree in Human Rights and Conflict Management from the Sant' Anna School of Advanced Studies of Pisa and a Master of Laws degree from the Catholic University of Milan, Italy.

19. **Brandon Gardner**, an American citizen and former member of the Pennsylvania Bar, joined the Secretariat as a legal officer in October 2011. Previously, Mr Gardner served as a Legal Advisor to the Elections Complaints and Appeals Commission on behalf of the Organization for Security and Cooperation in Europe's Mission in Kosovo (2009-2011). Prior to that, Mr Gardner served as a legal officer in the External Relations Section of UNMIK's Department of Justice and in UNMIK's Rule of Law Liaison Office (2007-2009). Mr Gardner also has practised as an attorney in

Pennsylvania (2006-2007). Mr Gardner holds a Juris Doctorate from the University of Pittsburgh School of Law, and a Bachelor of Arts in Political Science and International Relations from the University of Pittsburgh.

20. **Snežana Martinović**, a national staff member, has been an administrative assistant with the Secretariat since December 2007. She commenced employment with the United Nations in 2000 where she worked as an Administrative Assistant with the UNMIK Department of Justice.

21. **Adlije Muzaqi**, a national staff member, has been an administrative assistant with the Secretariat since September 2010. She commenced employment with the United Nations in October 1999 as an administrative assistant with the UNMIK Municipal Administration in Vushtri/Vučitrn Municipality, Mitrovicë/Mitrovica Region.

2.2.2. **Members of the Secretariat who served during 2011**

22. **Rajesh Talwar**, an Indian citizen, worked for the United Nations over the past ten years in various capacities in Kosovo, Somalia, Liberia and Afghanistan before returning to Kosovo to take up the position of Executive Officer of the Human Rights Advisory Panel Secretariat. Prior to working for the United Nations he practised law in the Supreme Court of India and courts subordinate thereto. While practicing law he simultaneously taught LLB students at Delhi University and Jamia Millia Islamia over a period of six years. As a lawyer he was closely associated with several human rights cases including landmark petitions dealing with issues arising out of HIV/AIDS. In 1996 he went to the U.K. on a British Chevening scholarship, from where he did his LLM in Human Rights Law at the University of Nottingham. He has authored several publications, including books on law and human rights. In February 2011, Mr Talwar left the Secretariat to begin his employment in the United Nations Mission in Timor-Leste as a Legal Advisor to the Police Commissioner.

23. **Anila Premti**, an Albanian citizen, joined the Secretariat as a legal officer in October 2010, on temporary assignment from her regular post with UNCTAD in Geneva, Switzerland where she has worked since 2004. Previously, Ms Premti also served as a legal officer at UNMIK Department of Justice, Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (2007-2009), and at the United Nations Office of Legal Affairs, Codification Division, in New York (2001-2004). Prior to joining the United Nations, Ms Premti worked at the Ministry of Foreign Affairs in Albania (1995-2001), where she focused on legal and treaty issues, as well as on human rights issues in the context of the Organisation for Security and Cooperation in Europe and the Council of Europe. Ms Premti holds a Master of Laws degree from Tulane University in the United States, and a law degree from the University of Tirana, Albania. She has also studied international law and international relations in the Netherlands and in the United Kingdom. In October 2011, Ms Premti returned to her regular post with UNCTAD.

24. **Ravi K. Reddy**, an American citizen and member of the New York Bar, joined the Secretariat as a legal officer in May 2009. Previously, Mr Reddy served as a legal officer in the Office of the Director of the UNMIK Department of Justice and as a law clerk (legal officer) at the United States Advocacy Program of Human Rights Watch. Mr Reddy holds a Master of Laws in Human Rights Law from the University of

Nottingham, a Jurist Doctorate from the University of Pittsburgh, and a Bachelor of Arts in History from the University of Delaware. In June 2011, Mr Reddy joined the United Nations Mission in Timor-Leste, where he is employed as a legal officer in the Office of the Legal Advisor.

3. Regulatory Framework

3.1. Regulation No. 2006/12 and Administrative Direction No. 2009/1

25. The key legislative text for the operation of the Panel remains UNMIK Regulation No. 2006/12, which vests the Panel with jurisdiction to hear a wide range of human rights complaints allegedly attributable to UNMIK under the following instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, 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 and the Convention on the Rights of the Child. The Panel's temporal jurisdiction runs from 23 April 2005.⁴

26. On 17 October 2009, the SRSG promulgated UNMIK Administrative Direction No. 2009/1 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. This Administrative Direction in fact alters the admissibility criteria and procedure for the processing of complaints, the manner of conducting public hearings and the appointment procedure for Panel members. It regulates the manner of publishing press releases and announcements of the Panel. It also provides a cut-off date for the submission of complaints to the Panel. This Administrative Direction is discussed at length in the Panel's 2009 report in §§ 35-45.

27. The procedure before the Panel consists of two stages⁵: first, the examination of the admissibility of the complaint; and, second, if the complaint is declared admissible, the examination of the merits of the complaint. Admissibility is determined by a formal decision, containing the reasoning for the decision. In some cases the Panel has first taken a partial decision on admissibility and then determined the remaining admissibility issues by a final decision. Decisions are placed on the Panel's website after the parties to the proceedings have been notified. If the Panel declares the entire complaint, or part of it, admissible, it then commences its consideration of the merits of the complaint.

28. If the complaint proceeds to an examination of the merits, the Panel will issue an opinion on whether there was a violation of the complainant's human rights attributable to UNMIK, which may contain recommendations to the SRSG.⁶ Once an opinion has been provided to the parties, it is also published on the Panel's website.⁷ From there, the SRSG retains exclusive authority to decide whether to act on the findings of the Panel.⁸

⁴ UNMIK Regulation No. 2006/12, Section 2.

⁵ For a further description of the procedure before the Panel, see the Panel's 2009 Annual Report, available at http://www.unmikonline.org/human_rights/documents/annual_report2009.pdf, §§ 48-60.

⁶ UNMIK Regulation No. 2006/12, Section 17.1.

⁷ UNMIK Regulation No. 2006/12, Section 17.2.

⁸ UNMIK Regulation No. 2006/12, Section 17.3.

4. Panel Website

29. The Panel's website⁹ was upgraded further in 2011 to enable better user interface and easier access to the decisions and opinions of the Panel. The website lists the decisions and opinions of the Panel in two different formats. The website continues to list cases by the complainant's name, so that anyone can quickly access the Panel's decisions and opinions for a particular case. In addition, the Panel also lists each of its decisions and opinions by case number, so that the public can follow the evolution of the jurisprudence of the Panel. Further additions are being made to the website to improve user accessibility.

5. Caseload of the Panel and Statistics

5.1. Statistics

30. During the reporting period, no new complaints were received, as 31 March 2010 was the cut-off date for the submission of new complaints. Between 2006 and 2010, the Panel received a total of 526 complaints¹⁰. At the end of 2011, all complaints have been translated.

31. During the reporting period, the Panel adopted 6 opinions on the merits (concerning 46 complaints), found a further 114 complaints admissible or admissible in part, declared 50 complaints inadmissible and struck 2 complaints from the list.

32. At the end of 2011, there were 257 cases pending before the Panel at the admissibility stage, and 105 cases awaiting an opinion on the merits¹¹. The Panel closed 98 cases in 2011.

33. During the year 2011, the Panel decided on the admissibility of 72 complaints involving allegations that UNMIK had failed to properly investigate a murder or missing person case related to the conflict in Kosovo, declaring 71 of these decisions admissible. The Panel is currently preparing to issue its opinions on the merits in this category of cases, which will occur during 2012.

⁹ <http://www.unmikonline.org/hrap/Eng/Pages/default.aspx>

¹⁰ This number varies slightly from previous reports as complaints received have been split for technical reasons.

¹¹ In cases for which there is a partial opinion on the merits, the case is still awaiting a final opinion on the merits. Also, following the promulgation of UNMIK Administrative Direction No. 2009/1, some cases currently awaiting an opinion on the merits require a second decision on admissibility.

HRAP Caseload, Communications & Determinations as of 31 December 2011								
Caseload	2006	2007	2008	2009	2010	2011	Total	
Received	3	12	69	353 ¹²	89	n/a	526	
Closed	0	0	18	11	37	98	164	
Pending	3	15	66	407	459	362	362	
Communications	2006	2007	2008	2009	2010	2011	Total	
Communicated to SRSG	0 ¹³	0	30	71	60	117	278	
Responses from SRSG	0	0	18	75	30	100	223	
Pending Response from SRSG	0	0	12	8	38	55	55	
Determinations: Type	2006	2007	2008	2009	2010	2011	Total	
Total	0	0	32	23	78	213	346	
Admissibility Decisions	0	0	28	22	56	164	270	
Partial Admissibility Decisions	0	0	2	0	1	0	3	
Strike off the List	0	0	0	3	5	2	10	
Opinions on the Merits	0	0	1	0	22	46	69	
Partial Opinions on the Merits	0	0	0	1 ¹⁴	0	0	1	
Requests for Revision	0	0	1	0	0	1	2	
Determinations: Finding	2006	2007	2008	2009	2010	2011	Total	
Decisions	Admissible	0	0	11	2	16	63	92
	Partially Admissible	0	0	(2)	9	24(1)	51	84(3¹⁵)
	Inadmissible	0	0	17	8	10	50	85
	Strike off the List	0	0	0	3	5	2	10
Opinions: Violation	0	0	1	0	21	45	67	
Opinions: No Violation	0	0	0	(1)	1	1	2 (1¹⁶)	
Requests for Revision	0	0	1	0	0	1	2	

¹² Cases received in 2009 and split into two or more cases in 2010 were added to the 2009 figures.

¹³ The Panel was not appointed until January 2007 and did not have its first session until November 2007, hence there are only 0s in all of the columns from the years 2006 and 2007, with the exception of cases received and cases pending.

¹⁴ This refers to a partial opinion on the merits, in which the Panel determined a significant substantive issue, but adjourned a further examination of the merits to a later date; see 2009 Annual Report, §§ 75 and 94.

¹⁵ The numbers in parenthesis refer to partial decisions on admissibility

¹⁶ The numbers in parenthesis refer to partial opinion on the merits referenced in footnote 14, *supra*.

5.2. Trends and Issues of Note

34. Certain trends in the caseload and practice of the Panel have remained whilst others have altered significantly from the last reporting period. In 2011, the Panel made it the number one priority to adopt admissibility decisions for as many alleged ineffective investigations of missing and/or murdered person (MMP) cases as possible. As these cases are extremely sensitive and collecting information was often a challenging task, the Panel developed new methodologies in gathering data in such cases. This included increased utilisation of the various databases containing relevant materials, such as the databases of the International Committee of the Red Cross, the International Commission on Missing Persons, and the UNMIK/EULEX Office of Missing Persons and Forensics. The Panel decided that there was a presumption that when a complainant's relative was listed in any of these databases as an MMP, UNMIK was sufficiently informed about the disappearance and/or killing of the MMP, and therefore had a duty to investigate the murder and/or disappearance under the procedural requirements of the right to life (Article 2 of the European Convention of Human Rights (ECHR)).

35. Regarding these cases, the Panel received a significant number of UNMIK police files and other files concerning investigations into the cases of murdered and missing persons. This enabled the Panel to undertake a much deeper analysis of the facts and circumstances regarding these sensitive matters. However, as mentioned above, access to these files, the majority of which are currently in the possession of the EULEX Mission in Kosovo, does not always depend solely on UNMIK's efforts, and in a number of cases there was a significant delay between the time that the Panel requested such information and the time that it was provided, if it was provided at all. Although the co-operation between UNMIK, EULEX and the Panel has improved somewhat concerning these issues, the time lag for UNMIK to process these requests has impacted the Panel's ability to continue its work on these cases.

36. Another trend that the Panel noted regarding MMP cases throughout 2011 was UNMIK's beginning to challenge the admissibility of the complainant's right to be free from inhuman treatment, specifically the right to be free from the mental pain and suffering caused by the disappearance of a relative (Article 3 of the ECHR). In previous cases, UNMIK did not raise any objection to the admissibility of Article 3 in this context. However, toward the end of the reporting period, UNMIK provided a number of arguments challenging the admissibility of Article 3 in regard to UNMIK's obligations. These developments are discussed in further detail below (§ 55 *et seq.*)

37. The Panel continued to issue omnibus decisions and opinions, specifically in the "14,000" cases¹⁷, where the facts were similar enough to allow such categorizations. This method allowed for the Panel to work more expeditiously on these matters.

¹⁷ Referring to thousands of cases filed against UNMIK, KFOR, the PISG, and various Municipalities in 2004 for which proceedings were suspended following a letter from UNMIK to the various courts of Kosovo. At the time the letter was sent, it referred to "over 14,000 cases" submitted. In the end, the figure was closer to 17,000 – 18,000 cases.

38. In 2011, the Panel and Secretariat made more extensive usage of other resources to collect information that it was unable to collect from the complainants' submissions to the Panel. For example, the Court Liaison Offices of the Ministry of Justice on many occasions provided the Panel with invaluable information that had been heretofore unobtainable. Also, the District Public Prosecutor's Office in Prishtinë/Priština submitted material to the Panel upon request. Similarly, UNMIK Police provided the Panel with information relating to the complaints, and acted as a channel of communication for information requests between the Panel and the Serbian Ministry of Internal Affairs. The Secretariat met with various associations related to the families of persons who were murdered or went missing during the conflict in Kosovo. The Secretariat also visited a complainant and had many in-office meetings with complainants to gather relevant information. In order to accelerate the processing of some cases, the Secretariat made a number of visits to the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters in order to obtain documents, including Kosovo Trust Agency files and Special Chamber judgments that had not been provided by the complainants. In fact, so much material was collected through this method that the Panel was able to categorise these cases for decisions on admissibility, in order to begin processing them in 2012.

39. In addition to the cases mentioned above, the Panel continued to process cases concerning the following:

- Allegations of a violation of the right to a fair trial (Article 6 § 1 of the European Convention of Human Rights (ECHR)), right to respect for private and family life (Article 8 § 1 of the ECHR), the right to protection of property (Article 1 of Protocol No. 1 to the ECHR), as well as the right to an effective remedy (Article 13 of the ECHR), in relation to decisions made by the Housing and Property Directorate and its Housing and Property Claims Commission, and the Kosovo Property Agency and its Property Claims Commission concerning ownership and occupancy.
- Allegations of a violation of the right to a fair trial (Article 6 § 1 of the ECHR), the right to respect for private and family life (Article 8 § 1 of the ECHR) and the right to protection of property (Article 1 of Protocol No. 1 to the ECHR), as well as the right to an effective remedy (Article 13 of the ECHR), in relation to unsuccessful evictions of alleged unlawful occupiers of property.
- Allegations of a violation of the right to a fair trial (Article 6 § 1 of the ECHR), right to respect for private and family life (Article 8 § 1 of the ECHR) and the right to protection of property (Article 1 of Protocol No. 1 to the ECHR) as well as the right to an effective remedy (Article 13 of the ECHR), in relation to allegedly conflicting decisions on property cases between the Housing and Property Directorate or the Kosovo Property Agency and municipal and district courts.
- Allegations of a violation of the right to a fair trial (Article 6 § 1 of the ECHR) and the right to protection of property (Article 1 of Protocol No. 1 to the ECHR), in relation to decisions made by the Special Chamber of the Supreme Court of Kosovo in relation to Kosovo Trust Agency Matters concerning employee benefits payable through the privatisation of Socially-Owned Enterprises (SOE) as well as ownership of the SOEs.

5.3. Opinions and Decisions of the Panel by Subject Matter

40. Below are a number of cases listed according to the subject matter:

Right to Life – Right to an Effective Investigation – Prohibition Torture, Inhuman or Degrading Treatment

Lack of an Effective Investigation by UNMIK Regarding a Murder Case

- *M.M. and V.M.*, 35/09 (decision of 18 March 2011) – Admissible
- *N.P., D.P., D.K., B.P., L.J., D.L., & S.P.*, 341/09 (decision of 15 September 2011) - Inadmissible

Lack of an Effective Investigation by UNMIK Regarding a Murder/Missing Person Case Related to the Hostilities

- *C.S.*, 45/09 (decision of 18 March 2011) - Admissible
- *Rada Đukanović and Radmila Đukanović*, 67/09 & 140/09 (decision of 18 March 2011) - Admissible
- *Ljiljana Šljivić-Ćeranić*, 237/09 & 238/09 (decision of 18 March 2011) - Admissible
- *S.P. and Vidosava Đorđević*, 06/09 & 55/09 (decision of 13 April 2011) - Admissible
- *Mileva Stanišić*, 49/09 (decision of 13 April 2011) - Admissible
- *Svetlana Jočić*, 34/09 (decision of 13 April 2011) - Admissible
- *Nadica Nedeljković*, 46/09 (decision of 13 April 2011) - Admissible
- *Stana Pavić*, 47/09 (decision of 13 April 2011) - Admissible
- *Ruhan Ruhani*, 85/09 (decision of 13 April 2011) - Admissible
- *Đ.L.* 88/09 (decision of 13 April 2011) - Admissible
- *Svetlana Marinković*, 94/09 (decision of 13 April 2011) – Admissible
- *Ljiljana Milenković*, 97/09, *Marica Stojanović*, 332/09, *Dalibor Milenković*, 335/09 & *Ljubiša Milenković*, 345/09 (decision of 13 April 2011) - Admissible
- *Dušan Tomanović*, 248/09, *Jelena Tomanović-Kokotović*, 250/09 & *Verica Tomanović*, 251/09 (decision of 13 April 2011) - Admissible
- *Slavica Nedeljković*, 268/09 (decision of 13 April 2011) – Admissible
- *Zvezdan Vitošević*, 116/09 (decision of 12 May 2011) – Admissible
- *Ivan Vujačić*, 118/09 (decision of 12 May 2011) – Admissible
- *S.C.*, 13/09, *V.F.*, 93/09 & *O.L.*, 302/09 (decision of 11 August 2011) – Admissible
- *Katica Đurica*, 79/09 (decision of 12 August 2011) – Admissible
- *Nenad Stojković*, 87/09 (decision of 11 August 2011) – Admissible
- *Olivera Vitošević*, 90/09 & *Arsenije Vitošević*, 103/09 (decision of 12 August 2011) - Admissible
- *Marija Filipović*, 92/09 (decision of 11 August 2011) - Admissible
- *Jordanka Pavić*, 98/09 (decision of 12 August 2011) - Admissible
- *Milica Mladenović*, 99/09 (decision of 11 August 2011) – Admissible
- *Slavica Ristanović*, 123/09 (decision of 12 August 2011) – Admissible
- *Zorka Ristić*, 132/09 (decision of 11 August 2011) – Admissible

- *Zvonko Šabić*, 137/09 (decision of 12 August 2011) – Admissible
- *Angelina Biševac*, 223/09 (decision of 12 August 2011) – Admissible
- *Milivoje Todorovski*, 81/09 (decision of 16 September 2011) – Admissible
- *Danica Stanojković*, 105/09 & *Milosav Stojković*, 106/09 (decision of 15 September 2011) – Admissible
- *Tatjana Vitošević*, 139/09, *Veska Majmarević*, 218/09 & *Nataša Majmarević*, 325/09 (decision of 15 September 2011) – Admissible
- *Goran Knežević*, 141/09 (decision of 15 September 2011) – Admissible
- *Dobriša Antić-Živković*, 147/09 (decision of 15 September 2011) – Admissible
- *Vuksan Bulatović*, 166/09 (decision of 15 September 2011) – Admissible
- *Bosiljka Radovanović*, 177/09 (decision of 16 September 2011) – Admissible
- *Verica Ničetić*, 69/09 (decision of 27 October 2011) – Admissible
- *Milan Petrović*, 95/09 & 96/09 (decision of 27 October 2011) – Admissible
- *Ljubica Buljević*, 146/09 (decision of 27 October 2011) – Admissible
- *Jagoda Vukićević*, 272/09 (decision of 22 October 2011) – Admissible
- *Velibor Ađančić* 43/09, *Olga Ađančić*, 54/09, *M.A.*, 114/09, *Ljiljana Vukmirović*, 173/09 & *Božidarka Buha*, 242/09 (decision of 26 November 2011) – Admissible
- *Tomislav Stević*, 50/09 (decision of 26 November 2011) – Admissible
- *D.I.*, 57/09 (decision of 26 November 2011) – Admissible
- *Milorad Pejčinović*, 89/09 (decision of 7 November 2011) – Admissible
- *Milijana Minić*, 101/09 & 107/09 (decision of 8 November 2011) – Admissible
- *Mirjana Bogičević*, 112/09 (decision of 26 November 2011) – Admissible
- *Biljana Radovanović*, 154/09 & 155/09 (decision of 26 November 2011) – Admissible
- *Vinogorka Jovanović*, 222/09 (decision of 26 November 2011) – Admissible
- *Slobodan Petković*, 133/09 (decision of 16 December 2011) – Admissible
- *Cica Janković*, 249/09 (decision of 16 December 2011) – Admissible
- *Verica Patrnogić*, 252/09 (decision of 16 December 2011) – Admissible
- *Mira Ožegović*, 267/09 (decision of 16 December 2011) – Admissible
- *Vladimir Šćepanović*, 271/09 (decision of 16 December 2011) – Admissible
- *Vuksan Bulatović*, 165/09 (decision of 21 December 2011) - Inadmissible

Property - Right to Peaceful Enjoyment of Possessions

Complaint Against Serbian Judiciary

- *Todor Veselinović*, 65/10 (decision of 16 December 2011) - Inadmissible

UNMIK Failure to Protect Private Property

- *Olga Patrnogić*, 294/09 (decision of 12 May 2011) – Inadmissible
- *Miodrag Janković*, 62/10 (decision of 26 October 2011) - Inadmissible

NATO Usurpation of Property

- *Slavica Grubić-Milutinović*, 21/10 (decision of 26 November 2011) - Inadmissible

Complaint against Privatisation Agency of Kosovo

- *Branko Andrić*, 64/10 (decision of 16 December 2011) - Inadmissible

Complaint against Supreme Court Judgment after 9 December 2008

- *Feti Islami*, 13/10 (decision of 16 September 2011) – Inadmissible

Contract Disputes- Right of Access to a Court

Kosovo Protection Corps Breach of Contract

- *NTP Bujari (AS Petrol)*, 311/09 (decision of 18 March 2011) - Admissible
- *Linda, LLC*, 45/08 (decision of 13 May 2011) - Admissible

Employment Disputes

Right to Work

- *Milos Sejat and Others ("Electrokosmet")*, 33/10, *Tomislav Milićević and Others ("Sindikata JPPK Kosovo Obilić")*, 34/10 & *Radojko Gajić and Others ("JP Termoelektrane Obilić")*, 35/10 (decision of 17 March 2011) - Inadmissible

Dismissal from Kosovo Protection Corps

- *Gani Thaçi*, 13/08 (decision of 10 June 2011) - Admissible

Rights of Persons with Disabilities

- *N.G.*, 45/10 (decision of 13 April 2011) - Inadmissible

Housing and Property Claims Commission Cases

Right to Fair Trial – Right to an Effective Remedy – Right to Peaceful Enjoyment of Possessions – Right to a Decision within a Reasonable Time

- *Slavko Vulić*, 05/07 (opinion of 18 March 2011) - No Violation
- *Dragan Đorđević*, 03/09 (decision of 12 August 2011) - Inadmissible

The "14,000" Cases

Right to a Fair Trial – Peaceful Enjoyment of Possessions – Right to Effective Remedy

- *Ruža Simić*, 316/09 (decision of 21 January 2011) - Admissible
- *Momir Krasić*, 299/09 (decision of 21 January 2011) - Admissible
- *Danica Lalić*, 30/08, *Slobodan Dragojević*, 66/08, *Sreten Camović*, 24/09, *Milijazim Krasnići*, 25/09, *Petar Bojić*, 26/09, *Bajram Rama*, 28/09, *Boško Antić*, 33/09, *Dragoslav Mladenović*, 115/09, *Luka Anđelković*, 183/09, *Draginja Vujačić*, 186/09, *Plana Folić*, 198/09, *Jefka Ljakić*, 305/09 & *Malina Ađančić*, 350/09 (decision of 23 February 2011) - Admissible
- *Esat Berisha*, 27/08, *Milka Živković*, 29/08, *M.R.*, 42/08, *Ž.S.*, 44/08, *Tomo Petrović*, 59/08, *Obrad Došović*, 60/08, *Dragan Petković*, 64/08, *Miodrag Milosavljević*, 67/08, *Čedo Ralević*, 07/09, *Miljko Ralević*, 08/09, *Dragomir Ralević*, 09/09, *Milenko Ralević*, 10/09, *Simo Ralević*, 11/09, *Muharem Ibraj*, 16/09 & 17/09, *Musa Ibraj*, 22/09 & *Slobodan Aćimović*, 32/09 (opinion of 23 February 2011) – Violation
- *Danica Lalić*, 30/08, *Slobodan Dragojević*, 66/08, *Sreten Camović*, 24/09, *Milijazim Krasnići*, 25/09, *Petar Bojić*, 26/09, *Bajram Rama*, 28/09, *Boško Antić*, 33/09, *Dragoslav Mladenović*, 115/09, *Luka Anđelković*, 183/09, *Draginja Vujačić*, 186/09, *Plana Folić*, 198/09, *Jefka Ljakić*, 305/09, *Ruža Simić*, 316/09, & *Malina Ađančić*, 350/09 (opinion of 13 May 2011) - Violation
- *R.V.*, 16/10 & 17/10 (decision of 9 June 2011) - Admissible
- *Nenad Mladenović*, 172/09, *Lidija Milenković*, 182/09, *Bogoljub Kostić*, 190/09, *Blagica Ničić*, 207/09, *Sadik Nuka*, 315/09, *Miodrag Mališić*, 317 & 318/09,

- *Živorad Radić*, 321/09, *Nebojša Miladinovic*, 331/09 & *Vuksan Bulatović*, 353/09 (decision of 15 September 2011) – Admissible
- *Nenad Mladenović*, 172/09, *Lidija Milenković*, 182/09, *Bogoljub Kostić*, 190/09, *Blagica Ničić*, 207/09, *Momir Krasić*, 299/09 *Sadik Nuka*, 315/09, *Miodrag Mališić*, 317 & 318/09, *Živorad Radić*, 321/09, *Vuksan Bulatović*, 353/09 & *R.V.*, 16/10 & 17/10 (opinion of 16 December 2011) - Violation
- *Dragan Piljević*, 05/09 (decision of 16 December 2011) - Admissible
- *Velibor Ađančić*, 310/09 (decision of 16 December 2011) - Admissible

Special Chamber of the Supreme Court for Kosovo Trust Agency Related Matters

Right to Fair Trial – Right to Peaceful Enjoyment of Possessions – Right to Effective Remedy – Right to a Judicial Decision Within a Reasonable Time – Right to a Hearing by an Impartial Tribunal Established By Law

- *Rodoljub Todorović*, 33/08 (opinion of 15 April 2011) - Violation
- *Kabaš Krasnići*, 20/08 (opinion of 13 May 2011) - Violation
- *Deposit Insurance Agency*, 59/10 (decision of 26 October 2011) – Inadmissible
- *Jovica Joksimović*, 37/10 (decision of 26 November 2011) - Inadmissible

Right to be Free From Discrimination

- *Fillim Guga*, 47/08 (decision of 9 June 2011) – Admissible

Rights of Persons with Disabilities

- *N.G.*, 45/10 (decision of 13 April 2011) - Inadmissible

6. Jurisprudence of the Panel

41. As 2011 was the first year that the Panel was no longer receiving new complaints, the Panel was able to make significant progress in addressing its caseload. More importantly, in closing 98 cases that were on its docket, the Panel issued decisions and opinions that gave a degree of finality to complainants while simultaneously expanding the Panel's jurisprudence and speaking forth on a number of novel procedural and substantive matters. Some important decisions and opinions issued by the Panel in 2011 are described in more detail below.

6.1. Admissibility Issues

Six-Month Rule

42. Where a complaint is submitted to the UNMIK Office in Belgrade, which is subsequently significantly delayed in reaching the Panel, the running of the six-month period in which a complainant can file a complaint with the Panel is suspended from the time when the complaint is submitted to UNMIK's Office in Belgrade. See HRAP, *Dorđević*, no. 03/09, decision of 12 August 2011.

43. Where an official investigation took place and is subsequently terminated by a legal notice of termination of the investigation, the six-month period in which a complainant can file a complaint with the Panel begins to run from the date of receipt of such a notice. See HRAP, *N.P., D.P., D.K., B.P., L.J., D.L., & S.P.*, no. 341/09, decision of 15 September 2011.

44. Where the Supreme Court issues a decision declaring the applicant's petition inadmissible for lack of jurisdiction, this decision is considered the final decision for the purposes of the running of the six-month time-limit for filing a complaint with the Panel. See HRAP, *Thaçi*, no. 13/08, decision of 10 June 2011.

45. Where the complainant receives the mortal remains of a deceased person, the six-month time-limit starts to run from that date. See HRAP, *Petković*, no. 133/09, decision of 16 December 2011.

Jurisdiction *Ratione Temporis*

46. Where there has been the dismissal of an employee from his or her place of work, the date of dismissal determines whether the Panel has jurisdiction *ratione temporis* to deal with a complaint. In the case of *Sejat and Others ("Elektrokosmet")*, the complainants argued that the dismissal of 6,559 individuals from their workplaces during the summer of 1999, without notification or documentation, deprived them of the chance to participate in employment-related proceedings, as provided by the applicable law. However, according to Section 2 of UNMIK Regulation No. 2006/12, the Panel only has jurisdiction to examine alleged violations of human rights that occurred not earlier than 23 April 2005, or arising from facts that occurred prior to that date where the facts give rise to a continuing violation of human rights. Thus, since the dismissals occurred in 1999, and since the dismissals as such are considered "an instantaneous act", the Panel lacked jurisdiction *ratione temporis* to review the complaint. See HRAP, *Sejat and Others ("Elektrokosmet")*, case no. 33/10, decision of 17 March 2011.

47. Where a disappeared person is later found dead, the applicability of Article 3 of the ECHR is in principle limited to the distinct period during which the member(s) of the family sustained the uncertainty, anguish and distress appertaining to the specific phenomenon of disappearances. In the *Stojković* case, the complainant had alleged that he had suffered mental pain and suffering attributable to UNMIK due to the situation surrounding his brother's disappearance and subsequent murder. In 1999 the complainant's brother went missing. His remains were found in 2000, and returned to the complainant's family in August 2003. The Panel first noted that according to the case law of the European Court of Human Rights a member of the family of a disappeared person can under certain circumstances be considered the victim of inhuman treatment by the authorities contrary to Article 3 of the ECHR, which prohibits inhuman treatment. The Panel stated further that while it had no doubts as to the profound suffering caused to the complainant by the disappearance and death of his brother, nevertheless it concluded that the complaint concerning a violation of Article 3 of the ECHR was outside of its jurisdiction *ratione temporis*. See HRAP, *Stojković*, no. 87/09, decision of 11 August 2011. For further discussion of Article 3 of the ECHR, see § 55 *et seq.*, below.

Jurisdiction *Ratione Personae*

48. Although linked with the concept of the Panel's competence *ratione temporis*, the Panel held that in some cases concerning events that took place after UNMIK ceased to exercise executive authority over certain matters, the Panel lacked jurisdiction *ratione personae* over the actors responsible for the impugned acts. In the case *N.G.*, the Panel

reaffirmed its prior position that took into account the political reality on the ground and considered that from 15 June 2008 onwards, “UNMIK can in principle no longer be held responsible for acts or omissions imputable to the Kosovo authorities, merely on the basis of the continuing existence of Security Council resolution 1244 (1999).” The Panel continued to posit that, notwithstanding the above, there might be special circumstances that could lead to a different conclusion in particular cases. See HRAP, *N.G.*, no. 45/10, decision of 13 April 2011.

49. In the case *N.G.*, the complainant complained that the Ministry of Labour and Social Welfare had violated his rights as a person with disabilities by taking a decision denying the continuation of his disability pension. In examining its competence *ratione personae* to deal with the complaint, the Panel again noted that, following the entry into force of the Kosovo Constitution on 15 June 2008, and taking into account the numerous reports of the Secretary-General to the United Nations Security Council on the issue, the SRSG was unable to fully enforce the executive authority that is still formally vested upon him under Security Council resolution 1244 (1999). The Panel explained that the matter complained about did not engage the responsibility of UNMIK. See HRAP, *N.G.*, cited above (§ 48).

50. Likewise, in the *Islami* case, the Panel held that when the decision at issue was taken by the Supreme Court in 2009, UNMIK was no longer exercising executive authority over the Kosovo judiciary and had no responsibility for any violation of human rights allegedly committed by them. Therefore, such allegations fell outside of the Panel’s jurisdiction *ratione personae*. See HRAP, *Islami*, no. 13/10, decision of 16 September 2011. The Panel applied the same reasoning in the case *Joksimović*, in which the decision at issue was taken by the Special Chamber of the Supreme Court of Kosovo on Trust Agency Related Matters in June 2011, which again fell outside of the Panel’s jurisdiction *ratione personae*. See HRAP, *Joksimović*, no. 37/10, decision of 26 November 2011. For KPA and HPD related matters, the Panel reaffirmed that the period of review ended on 31 December 2008, when UNMIK Regulation No. 2006/50, which created the KPA as the successor to the HPD, expired. See HRAP, *Vulić*, no. 05/07, opinion of 18 March 2011.

51. The *Veselinović* case raised a different aspect of the Panel’s competence *ratione personae*. The complaint concerned alleged improprieties in the conduct of the judicial authorities in the Republic of Serbia. As the Panel found that the matter in no way engaged the responsibilities of UNMIK, the complaint fell outside of the Panel’s jurisdiction *ratione personae*. See HRAP, *Veselinović*, no. 65/10, decision of 16 December 2011. Similarly, in the case *Deposit Insurance Agency*, where the complainant was a public agency registered under the laws of the Republic of Serbia, the Panel found that UNMIK Regulation No. 2006/12 could not be interpreted to include complaints submitted by a State or any of its agencies, and as such, the complaint fell outside of the Panel’s jurisdiction *ratione personae*. See HRAP, *Deposit Insurance Agency*, no. 59/10, decision of 26 October 2011.

52. Finally, in the case *Grubić-Milutinović*, the Panel found that a complaint against NATO was also outside of its jurisdiction *ratione personae*. See HRAP, *Grubić-Milutinović*, no. 21/10, decision of 26 November 2011.

Other Admissibility Issues – Capacity of the Complainant

53. In the case *NTP Bujari (AS Petrol)*, the Panel had to determine whether a commercial company is considered a “person” for the purposes of construing the meaning of Section 1.2 of UNMIK Regulation No. 2006/12. The SRSG argued that the complainant was a legal person and did not have the capacity to file a complaint. The Panel disagreed, and noted that the word “person” can generally be understood to comprise not only natural persons, but also legal persons. Therefore, the complainant was entitled to submit a complaint. See HRAP, *NTP Bujari (AS Petrol)*, no. 311/09, decision of 18 March 2011. See also HRAP, *Linda, LLC*, no. 45/08, decision of 13 May 2011.

6.2. Strike Out

54. In addition to cases where the complainants no longer wanted to pursue the complaint (See for example HRAP, *Vezire Shenari and Sevdije Shenari*, no. 54/08 decision of 23 February 2011), the Panel also struck off the list a case that was a mere repetition of a previously filed complaint. See also HRAP, *N.G.*, cited above (§ 48).

6.3. Substantive Issues

6.3.1. Right to be free from Inhuman and Degrading Treatment – Article 3 of the ECHR

55. In 2011, the Panel reaffirmed its position, which had previously not been challenged by UNMIK in a large number of admissibility decisions, that a complainant may allege that UNMIK is responsible for mental pain and suffering caused to themselves and their family by the disappearance of a family member in the territory of Kosovo at or around the time of the conflict in Kosovo. See HRAP, *Vujačić*, no. 118/09, decision of 12 May 2011. But beginning with the case *Đurica*, UNMIK started to regularly contest the applicability of Article 3 of the ECHR in this category of cases. In *Đurica*, the complainant’s son was a conscript for the Yugoslav Army who went missing on 13 June 1999, while on duty near Prishtinë/Priština. UNMIK argued that the complainant did not assert any facts that could evidence a violation of Article 3 of the ECHR. The Panel thought otherwise, stating that despite the lack of express allegations put forward by the complainant in this respect, the complainant sets forth relevant facts upon which the alleged violation of Article 3 of the ECHR may be based. The Panel based its reasoning upon the jurisprudence of the European Court of Human Rights, which accepts that an Article 3 violation may occur, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Panel cited the European Court further, noting that “the relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries”. The Panel reasoned that the European Court also emphasises “that 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 HRAP, *Durica*, no. 79/09, decision of 12 August 2011.

56. UNMIK continued to disagree with the Panel about the application of Article 3 in a number of cases. One such case was *Filipović*, where the facts were as follows: the complainant alleged that her husband was murdered in Prizren/Prizren on 21 June 1999. Although the crime scene was sealed off by German KFOR thereafter, and the body was alleged to have been buried in the presence of KFOR troops two days after his murder, it appears that his body was misplaced and rediscovered nearly 8 years later by the UNMIK Office on Missing Persons and Forensics in Prizren. UNMIK argued that because the complainant did not expressly allege that the mental pain and anguish suffered was a result of UNMIK’s response to the killing of her husband, that Article 3 did not apply. The Panel decided that Article 3 did not apply in this case, but for different reasons. The Panel noted that the European Court does not usually extend the Application of Article 3 of the ECHR to the relatives of a person who has been killed in the case of an instantaneous death. The Panel applied the same principles to conclude that in this case Article 3 did not apply. See HRAP, *Filipović*, no. 92/09, decision of 11 August 2011.

57. In another case, *Mladenović*, decided the same day as *Filipović*, the Panel elaborated on its findings relating to the applicability of Article 3 in a different factual situation. The complainant in *Mladenović* alleged that her son was kidnapped in Kosovo on 25 June 1999. Despite reporting her son’s disappearance to UNMIK, along with various other organisations, her son remains missing. UNMIK argued again that Article 3 of the ECHR did not apply, as the complainant did not expressly allege that the fear and anguish that she suffered were a result of UNMIK’s response to the disappearance of the complainant’s son. The Panel disagreed, and considered that a complainant may invoke a violation of Article 3 of the ECHR even if there is no explicit reference to specific acts of the authorities involved in the investigation, since also the passivity of the authorities and the absence of information given to the complainant may be indicative of inhuman treatment of the complainant by the authorities. The Panel concluded that this part of the complaint was not manifestly ill-founded; the Panel rejected UNMIK’s objections and declared the Article 3 complaint admissible. See HRAP, *Mladenović*, no. 99/09, decision of 11 August 2011.

6.3.2. Right to a Fair Trial – Article 6 § 1 of the ECHR

Right of Access to a Court

58. The rights guaranteed by Article 6 § 1 of the ECHR, *i.e.* the right of the complainants to have their claims determined by courts, are not affected by the complainant’s inaction once a claim has been filed with the relevant court. See HRAP, *Lalić and Others*, nos. 30/08, 66/08, 24/09, 25/09, 26/09, 28/09, 33/09, 115/09, 183/09, 186/09, 198/09, 305/09, 316/09 and 350/09, opinion of 13 May 2011.

59. In the *Lalić and Others* case, the complainants alleged that the above mentioned August 2004 letter from the UNMIK Department of Justice, which halted judicial proceedings in a certain group of cases filed largely by displaced ethnic Serbs for damage to property damaged or destroyed after the entry of UNMIK into Kosovo in 1999 and later known as the “14,000 cases”, led to a violation of various aspects of

Article 6 § 1 of the ECHR. UNMIK made a number arguments, most of which the Panel had already rejected in the cases *Milogorić and Others* and *Berisha and Others*. (See HRAP, *Milogorić, and Others*, nos. 38/08, 58/08, 61/08, 63/08 and 69/08, opinion of 24 March 2010 and HRAP, *Berisha and Others*, nos. 27/08, 29/08, 42/08, 44/08, 59/08, 60/08, 64/08, 67/08, 07/09, 08/09, 09/09, 10/09, 11/09, 16/09 & 17/09, 22/09 and 32/09, opinion of 23 February 2011). However, UNMIK further argued that the majority of the complainants had not presented any evidence to show that they in any way ever enquired as to the progress of their cases, nor complained that their cases should progress within either the local courts in Kosovo, the DOJ or any other UNMIK or PISG organ, including the Court Liaison Offices. Nor had the complainants complained to EULEX subsequent to its deployment in Kosovo in December 2008. UNMIK further argued that some of the complainants had not shown that they took any steps to repossess their property following the decisions of the Housing and Property Claims Commission (HPCC) made between June 2003 and October 2008.

60. The Panel did not find these arguments persuasive. First, regarding the alleged failure of the complainants to enquire with the relevant court about the progress of their cases, the Panel noted that once the complainants had filed their claims they could reasonably expect that a date for a hearing would be set. They were not obliged to take any further steps. Moreover, the suspension of the examination of their cases was not due to reasons relating to the functioning of the relevant court but was the consequence of a general letter sent by the Director of the DOJ to the courts. In these circumstances, enquiring with the relevant court about the state of the proceedings in any given case could not have had any effect on the actual progress of that case. The Panel therefore finds that the complainants cannot be blamed for not having enquired as to the progress of their cases. Regarding the argument that the complainants did not enquire with EULEX about the progress of their cases, subsequent to EULEX's deployment in December 2008, the Panel found that this issue was irrelevant for the examination of the complaints, as the complaints relate to a situation that lasted until September 2008. Moreover, the situation after December 2008 fell in any event outside UNMIK's responsibility. Finally, insofar as UNMIK argued that some of the complainants did not show that they took steps to repossess their property following a decision taken in their favour by the HPCC between June 2003 and October 2008, the Panel also found this argument irrelevant. The complainants' claims with the HPCC concerned the recognition of their property rights, while their claims with the courts concerned compensation for damage to their property. These two sorts of claim are different in nature. The decisions taken by the HPCC could not have any bearing on the processing of the compensation claims by the courts. In the light of those findings, the Panel decided that there has been a violation of Article 6 § 1 of the ECHR in respect of the inability of the complainants to have their claims determined by the courts. See HRAP, *Lalić and Others*, cited above (§ 58).

Independent and Impartial Tribunal Established by Law

61. In the *Krasnići* case, the Panel was called upon to determine whether the Special Chamber had acted as an impartial tribunal established by law in light of the fact that the judgment against the complainant was handed down by a panel of four judges, while the relevant legislation provided that the panel was to be composed of five judges. The Panel first looked into Section 3.1 of UNMIK Regulation No. 2002/13, but did not find it determinative of the matter. The Panel next considered Section 13.3 of UNMIK

Administrative Direction No 2006/17, which the Panel found less ambiguous. The first sentence of Section 13.3 allows for “panels composed of three judges”, not a minimum of three judges. This strict reading is corroborated by the fact that the second sentence continues by specifying that “such panel of three judges” shall be composed of the Presiding Judge of the Special Chamber or his designate, an International Judge and a Judge who is a resident of Kosovo. Nothing is provided about the composition of a four-judge panel. See HRAP, *Krasnići*, no. 20/08, opinion of 13 May 2011.

62. The Panel concluded that a case before the Special Chamber could be heard either by the full Chamber, composed of five judges, or a panel of three judges reflecting the mixed composition of the Special Chamber (a majority of international judges and a minority of local judges), but not by a panel of four judges. If a case was assigned to a panel of three judges, decisions had to be adopted by consensus; if one judge could not join his or her two colleagues, the case had to be referred to the full Chamber of five-judges. There may be situations where the full Chamber was unable to sit with five judges. It would be perfectly understandable if the applicable regulatory framework allowed the Presiding Judge to derogate from the generally applicable rules and refer certain cases to a panel of four judges. However, there was nothing in the legal framework that explicitly allowed the Presiding Judge to do so. Even assuming that the Presiding Judge was implicitly empowered to find *ad hoc* solutions in cases of necessity, the law did not set out any criteria in this respect. The resulting legal uncertainty and lack of transparency are in themselves incompatible with the requirement that a tribunal should be “established by law”, *i.e.* that its composition should be determined according to clear rules, so that any appearance of arbitrariness in the assignment of particular cases to specific judges can be avoided. Accordingly, the Panel found that the Special Chamber sitting in the complainant’s case with four judges could not be regarded as a tribunal established by law, and therefore that Article 6 § 1 of the ECHR had been violated. See HRAP, *Krasnići*, cited above (§ 61).

Fairness of Proceedings

63. As a general rule, it is for the competent courts to assess the evidence before them as well as the relevance of the evidence which parties seek to adduce. The Panel will only interfere where the assessment of the evidence or establishment of the facts by the courts can be impeached on the ground that they were manifestly unreasonable or in any other way arbitrary. The Panel will not substitute its own assessment of the facts for that of the relevant court of tribunal. The Panel's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was assessed, were fair. See HRAP, *Guga*, no. 47/08, decision of 9 June 2011.

Length of Proceedings

64. In civil cases, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the complainant and the relevant authorities, and what was at stake for the complainant in the dispute. It is the duty of the relevant authorities to organise their legal system so as to allow the courts to comply with the requirements of Article 6 § 1 of the ECHR, including that of a right to a judicial decision within a “reasonable time”. See HRAP, *Todorović*, no. 33/08, opinion of 15 April 2011.

65. In the *Todorović* case, the complainant was the heir to a piece of land in Prizren/Prizren that had been expropriated by the relevant authorities in 1965, and been granted to a socially-owned enterprise. In 1998, the complainants obtained a decision from the Serbian Ministry of Finance which held that the expropriation decision was no longer valid. However, because of the conflict, the complainant was not able to recover his property. On 10 January 2005, the complainant filed a claim with the Special Chamber requesting pecuniary compensation for the land that would be privatised. On 23 October 2007, the Special Chamber adopted its judgment against the complainant, and on July 2008, the complainant was served with the final judgment. Considering the length of proceedings, the Panel noted that that the claim brought by the complainant and his co-claimants before the Special Chamber raised complex legal issues; however, the complexity of the case did not in itself justify a period of 3.5 years for the termination of the proceedings, or even a period of 8.5 months for the drafting and service of the judgment.

66. The Panel found that while the claimants may have contributed to some delay by filing additional submissions after the completion of the hearings, the delay in the preparation of the written judgment and in the service thereof could obviously not be attributed to the complainant. As regards the conduct of the authorities, the SRSG argued that the judgment took a longer time to issue because a number of administrative tasks were assigned to the judge rapporteur. In the opinion of the Panel, this was not a convincing argument, as Article 6 § 1 ECHR imposes on the competent authorities the duty to organise their judicial system in such a way that the courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time. Rather than assigning administrative tasks to the judge, the authorities could have relieved him of these tasks, so as to allow him to draft the text of the judgment. The SRSG also argued that the delays in serving the final judgment were caused by the deliberations on the draft text of the judgment, the regular absences of the international judges and the need for translations of drafts and amendments. The Panel accepted that the adoption of a judgment by a court composed partly of international judges and partly of Kosovo judges may require more time than if the court were composed exclusively of Kosovo judges, all speaking the same language. However, the SRSG has not given a detailed description of the effects of the presence of international judges on the duration of the deliberations in the present case, nor did he mention any specific circumstance that would make it difficult to serve the judgment on the complainant or his representative. Therefore, the Panel decided that, mainly as a result of the delay in the delivery of the judgment in writing and its subsequent service, the complainant did not receive a decision within a reasonable time: accordingly, there was a violation of Article 6 § 1 ECHR. See HRAP *Todorović*, cited above (§ 64); compare with *Vulić*, cited below (§ 67).

Execution of Decisions

67. In the *Vulić* case, the complainant argued that the Housing and Property Claims Commission (HPCC), as a mass claims body for the settlement of disputes concerning residential property rights, violated his right to a fair trial pursuant to Article 6 § 1 of the ECHR, specifically by denying him the right to enforcement of a final judicial decision. The relevant facts are summarized as follows: the complainant's immovable property in Klinë/Klina Municipality was usurped after the hostilities broke out in

Kosovo in 1999. In 2002, the complainant filed a claim with the HPD seeking repossession of his property. On 16 November 2006, the HPCC adopted its decision on reconsideration, in favour of the complainant. It was more than two years and seven months before the decision was successfully enforced and the complainant took possession of his property. However, the Panel noted that the complainant to a certain degree contributed to the delay by not picking up the keys to the property and by not following the KPA's standard operating procedures. The Panel in this respect referred to Section 13.6 of UNMIK Regulation No. 2000/60, which provides that "any person who, without lawful excuse, enters a property by breaking a seal may be subject to removal from the property by the law enforcement authorities". This provision was interpreted by the KPA to mean that it was under an obligation to conduct an additional eviction only if the property was re-occupied within 72 hours of the initial eviction. Thus, the complainant actually put himself in the odd position of worsening his situation by the failure to collect his keys. Had he collected the keys to the property after either of the two allegedly successful evictions and reported afterward that the property had been re-occupied, the KPA would have been obliged to conduct another eviction. Instead, the complainant refused to collect the keys, thus passing the obligation on to the police to conduct any eviction. However, the police indicated that it was the KPA who had to act upon the request for eviction, since the police lacked the jurisdiction to act in property matters unless the property had been re-occupied and in the present instance that the property was never considered to be in the possession of the complainant. Thus, the complainant essentially put himself in a situation where neither the KPA nor the police appeared to be responsible for conducting the further eviction. The Panel noted that only one year and fifteen days of the total duration of the enforcement process occurred within the period when UNMIK was administering the KPA, and that only this time period falls within the Panel's jurisdiction. With respect to that period of time, the Panel considered, especially having regard to the conduct of the complainant, that this delay did not result (at least not up to 31 December 2008) in a denial of the complainant's right to the execution of a final and binding decision. Therefore, the Panel found that there had been no violation of Article 6 § 1 of the ECHR. See HRAP, *Vulić*, no. 05/07, opinion of 18 March 2011.

7. Recommendations of the Panel

68. In 2011, the Panel adopted a number of opinions on the merits where it found violations of human rights for which UNMIK was responsible. A continuing difficulty was the issue of what recommendations to make in a situation where UNMIK is no longer able to have a direct impact on decisions being made in Kosovo. As noted previously, UNMIK can no longer amend legislation as necessary (or in any case, even if it amended the relevant legislation, it could no longer ensure enforcement), nor can it direct the Kosovo authorities to remedy other deficiencies identified by the Panel. This situation required the Panel to be cognisant of such limitations while making recommendations that would have a beneficial impact on the human rights situation of the affected complaints.

69. In some instances, the Panel recommended non-pecuniary compensation for the violation (see HRAP, *Mladenović and Others nos.* 172/09, 182/09, 190/09, 207/09, 299/09, 315/09, 317/09, 318/09, 321/09, 353/09, 16/10 and 17/10, opinion of 16 December 2011). In other cases, the Panel recommended that UNMIK itself recognise

that a violation has taken place and it indicated that this acknowledgment would be sufficient reparation in the circumstances. See HRAP, *Krasnići*, cited above (§ 61).

70. In still other cases, the Panel would have recommended certain concrete actions for UNMIK to undertake to remedy the situation, if it were not for the fact that UNMIK was no longer capable of exercising its mandate under United Nations Security Council resolution 1244 following the unilateral declaration of independence by the Kosovo authorities and subsequent developments on the ground. In recognition of the fact that UNMIK could no longer itself take the necessary steps to remedy a situation, the Panel has recommended that UNMIK share the opinion with the relevant actors in that field to prompt further action. The Panel used this formula in *Lalić and Others*, recommending that UNMIK “urge the Kosovo authorities, to take all possible steps in order to assure that the complainants’ cases will be decided without delay” See HRAP, *Lalić and Others*, cited above (§ 68).

71. In every complaint to date in which the Panel has found a violation, the Panel has recommended that UNMIK take immediate and effective measures to implement its recommendations and to inform the complainant and the Panel about further developments in the case. However, UNMIK’s lack of information about the implementation of the Panel’s recommendations has become increasingly worrying.

8. UNMIK’s Lack of Public Reactions to the Panel’s Recommendations

72. Following the adoption of an opinion on the merits the Panel communicates that opinion to the complainant and to UNMIK. In the communication to UNMIK, the Panel makes reference to Sections 17.3 and 17.4 of UNMIK Regulation No. 2006/12. Section 17.3 provides that the SRSG shall have exclusive authority and discretion to decide whether to act on the findings of the Panel, while Section 17.4 requires that the decisions of the SRSG “shall be published promptly in English, Albanian and Serbian in a manner that ensure broad dissemination and accessibility.” Since 2010, UNMIK published only one press release in response to the opinions adopted by the Panel.¹⁸ In practice, this means that UNMIK gave no public reaction to the five opinions the Panel issued in 2011 in which the Panel found violations of human rights attributable to UNMIK. The Panel is concerned about UNMIK’s lack of public reaction to the Panel’s recommendations. Without such a reaction the totality of the process envisioned by UNMIK Regulation No. 2006/12 does not conclude. The Panel hopes that going forward into 2012 and beyond, the SRSG will renew UNMIK’s engagements toward both the complainants and the general public and publish such information.

¹⁸ For further information about this UNMIK response, see the Panel’s 2010 Annual Report, § 122 *et seq.*, available at <http://www.unmikonline.org/hrap/Eng/Pages/Annual-Report.aspx>.

Annexes

Annex A: UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 23 March 2006

Annex B: UNMIK Administrative Direction No. 2009/1, Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 17 October 2009

Annex C: HRAP Complaints Received by Year

Annex D: HRAP Closed Cases (Inadmissible, or Opinion on the Merits) by Year

Annex E: HRAP Case Flow Chart

Annex A: UNMIK Regulation No. 2006/12

UNITED NATIONS
United Nations Interim
Administration Mission in
Kosovo



UNMIK

NATIONS UNIES
Mission d'Administration
Intérimaire des Nations
Unies au
Kosovo

UNMIK/REG/2006/12
23 March 2006

REGULATION NO. 2006/12

ON THE ESTABLISHMENT OF THE HUMAN RIGHTS ADVISORY PANEL

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

For the purpose of establishing a Human Rights Advisory Panel as a provisional body during the term of the mandate of UNMIK to examine alleged violations of human rights by UNMIK,

Hereby promulgates the following Regulation:

CHAPTER 1: The Establishment and Jurisdiction of the Human Rights Advisory Panel

Section 1

Establishment of the Human Rights Advisory Panel

1.1 The Human Rights Advisory Panel (Advisory Panel) is hereby established.

1.2 The Advisory Panel shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of the human rights, as set forth in one or more of the following instruments:

- (a) The Universal Declaration of Human Rights of 10 December 1948;

(b) The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto;

(c) The International Covenant on Civil and Political Rights of 16 December 1966 and the Protocols thereto;

(d) The International Covenant on Economic Social and Cultural Rights of 16 December 1966;

(e) The Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;

(f) The Convention on the Elimination of All Forms of Discrimination Against Women of 17 December 1979;

(g) The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 17 December 1984; and

(h) The Convention on the Rights of the Child of 20 December 1989.

1.3 Upon completion of an examination of a complaint, the Advisory Panel shall submit its findings to the Special Representative of the Secretary-General. The findings of the Advisory Panel, which may include recommendations, shall be of an advisory nature.

Section 2

Temporal and Territorial Jurisdiction

The Advisory Panel shall have jurisdiction over the whole territory of Kosovo and 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.

Section 3

Admissibility Criteria

3.1 The Advisory Panel may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been pursued, and within a period of six months from the date on which the final decision was taken.

3.2 The Advisory Panel shall not deal with any complaint that

(a) Is anonymous; or

(b) Is substantially the same as a matter that has already been examined by the Advisory Panel and contains no relevant new information.

3.3 The Advisory Panel shall declare inadmissible any complaint which it considers incompatible with the human rights set forth in one or more of the instruments referred to in section 1.2 above, manifestly ill-founded or an abuse of the right of complaint.

CHAPTER 2: The Composition and Status of the Human Rights Advisory Panel

Section 4
Seat and Composition

4.1 The Advisory Panel shall have its seat in Pristina.

4.2 The Advisory Panel shall consist of three members, of whom one shall be designated as the presiding member. At least one member of the Advisory Panel shall be a woman.

4.3 The members of the Advisory Panel shall be international jurists of high moral character, impartiality and integrity with a demonstrated expertise in human rights, particularly the European system.

Section 5
Appointment of the Members

5.1 The Special Representative of the Secretary-General shall appoint the members of the Advisory Panel, upon the proposal of the President of the European Court of Human Rights.

5.2 The members shall be appointed for a term of two years. The appointment may be renewed for further terms of two years.

Section 6
Oath or Solemn Declaration

Upon appointment, each member of Advisory Panel shall subscribe to the following declaration before the Special Representative of the Secretary-General or his or her designate:

"I do hereby solemnly declare that:

“In carrying out the functions of my office, I shall uphold the law at all times and act in accordance with the highest standards of professionalism and the utmost respect for the dignity of my office and the duties with which I have been entrusted.

In carrying out the functions of my office, I shall uphold at all times the highest level of internationally recognized human rights standards, including those embodied in the principles of the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the International Covenant on Civil and Political Rights and its Protocols, the International Covenant on Economic, Social and Cultural Rights, the 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 and the Convention on the Rights of the Child.”

Section 7
Immunity and Inviolability

7.1 The premises used by the Advisory Panel shall be inviolable. The archives, files, documents, communications, property, funds and assets of the Advisory Panel, wherever located and by whomsoever held, shall be inviolable and immune from search, seizure, requisition, confiscation, expropriation or any other form of interference, where by executive, administrative, judicial or legislative action.

7.2 Members of the Advisory Panel shall have the same immunities as UNMIK personnel under sections 3.3 and 3.4 of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR, UNMIK and their Personnel in Kosovo.

7.3 The Secretary-General shall have the right and duty to waive the immunity of a member of the Advisory Panel in any case where in his opinion the immunity would impede the course of justice and can be waived without prejudice to the interests of UNMIK.

Section 8
Financial and Human Resources

Appropriate arrangements shall be made to ensure the effective functioning of the Advisory Panel through the provision of requisite financial and human resources.

Section 9
Secretariat

A full-time secretariat shall service the Advisory Panel.

CHAPTER 3: Procedure before the Human Rights Advisory Panel

Section 10
Submission of complaints and *Ex Officio* Representatives

10.1 A complaint shall be submitted in writing to the Advisory Panel.

10.2 The complainant may submit the complaint or a family-member, a non-governmental organization or a trade union may submit the complaint on behalf of the complainant.

10.3 In the absence of the submission of a complaint under section 10.2, the Advisory Panel may appoint a suitable person as an *ex officio* representative to submit a complaint and act on behalf of a suspected victim or victims in the procedure set forth in the present Chapter, if the Advisory Panel has reliable information that a violation of human rights has occurred.

10.4 On the application of the *ex officio* representative, the Advisory Panel may terminate a procedure under section 10.3 if the suspected victim or victims do not wish the procedure to continue or if the continuation of the procedure is not in the public interest for some other reason.

10.5 There shall be no charge for the submission of a complaint.

Section 11
Written Submissions

11.1 A complaint shall set forth all relevant facts upon which the alleged violation of human rights is based. Documentary evidence may be attached to the complaint.

11.2 On receiving the complaint the Advisory Panel shall determine whether the complaint is admissible. If the information provided with the complaint does not allow such determination to be made, the Advisory Panel shall request additional information from the complainant. If the Advisory Panel determines that the complaint is inadmissible, it shall render a determination by which the complaint is dismissed.

11.3 When the Advisory Panel determines that a complaint is admissible, it shall refer the complaint to the Special Representative of the Secretary-General with a view to obtaining a response on behalf of UNMIK to the complaint. Such response shall be submitted to the Advisory Panel within twenty (20) days of the receipt of the complaint by the Special Representative of the Secretary-General.

11.4 The Panel may request the complainant and UNMIK to make further written submissions within periods of time that it shall specify if such submissions are in the interests of justice.

Section 12
Confidentiality of Communications

12.1 The communications between the Advisory Panel and the complainant or the person acting on his or her behalf shall be confidential.

12.2 The confidentiality of communications as set forth in section 12.1 shall apply fully when the complainant or the person acting on his or her behalf is in detention.

Section 13
The Participation of an *Amicus Curiae* and the Ombudsperson

13.1 The Advisory Panel may, where it is in the interests of justice, invite

(a) An *amicus curiae* to submit written observations; and

(b) The Ombudsperson to submit written observations if the Ombudsperson has already been seized of the matter.

13.2 The submission of written observations by the Ombudsperson shall be without prejudice to the powers, responsibilities and obligations of the Ombudsperson under the applicable law.

Section 14
Oral hearings

Where it is in the interests of justice, the Advisory Panel shall hold oral hearings.

Section 15
Requests for the appearance of persons or the submission of documents

15.1 The Advisory Panel may request the appearance of any person, including UNMIK personnel, or the submission of any documents, including files and documents in the possession of UNMIK, which may be relevant to the complaint.

15.2 The Special Representative of the Secretary-General shall cooperate with the Advisory Panel and provide it with the necessary assistance in the exercise of its powers and authorities, including, in particular, in the release of documents and information relevant to the complaint.

15.3 Requests for the appearance of UNMIK personnel or for the submission of United Nations documents shall be submitted to the Special Representative of the Secretary-General. In deciding whether to comply with such requests, the Special Representative of the Secretary-General shall take into account the interests of justice, the promotion of human rights and the interests of UNMIK and the United Nations as a whole.

Section 16
Public hearings and access to documents deposited with the Advisory Panel

16.1 Hearings of the Advisory Panel shall be in public unless the Advisory Panel in exceptional circumstances decides otherwise.

16.2 Upon the approval of the Advisory Panel, documents deposited with the Human Rights Advisory Panel may be made available to a person having a legitimate interest in the matter in response to a request in writing.

Section 17
Findings and Recommendations of the Advisory Panel

17.1 The Advisory Panel shall issue findings as to whether there has been a breach of human rights and, where necessary, make recommendations. Such findings and any recommendations of the Advisory Panel shall be submitted to the Special Representative of the Secretary-General.

17.2 The findings and recommendations of the Advisory Panel shall be published promptly in English, Albanian and Serbian in a manner that ensures broad dissemination and accessibility.

17.3 The Special Representative of the Secretary-General shall have exclusive authority and discretion to decide whether to act on the findings of the Advisory Panel.

17.4 The decisions of the Special Representative of the Secretary-General shall be published promptly in English, Albanian and Serbian in a manner that ensures broad dissemination and accessibility.

Section 18
Rules of Procedure

18.1 The Advisory Panel shall adopt rules of procedure for its proceedings. The rules of procedure may assign powers and responsibilities to the secretariat of the Advisory Panel.

18.2 Upon adoption by the Advisory Panel, the rules of procedure shall be published promptly in English, Albanian and Serbian in a manner that ensures broad dissemination and accessibility.

CHAPTER 4: Final Provisions

Section 19
Implementation

The Special Representative of the Secretary-General may issue any necessary Administrative Directions for the implementation of the present Regulation.

Section 20
Applicable Law

The present Regulation shall supersede any provision in the applicable law that is inconsistent with it.

Section 21
Entry into force

The present Regulation shall enter into force on 23 March 2006, except for section 10 which will become effective on 23 April 2006.

Søren Jessen-Petersen
Special Representative of the Secretary-General

Annex B: UNMIK Administrative Direction No. 2009/1

UNITED NATIONS
United Nations Interim
Administration Mission in
Kosovo



UNMIK

NATIONS UNIES
Mission d'Administration
Intérimaire des Nations
Unies au
Kosovo

UNMIK/DIR/2009/1
17 October 2009

ADMINISTRATIVE DIRECTION NO. 2009/1

**IMPLEMENTING UNMIK REGULATION NO. 2006/12 ON THE
ESTABLISHMENT OF THE HUMAN RIGHTS ADVISORY PANEL**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under section 19 of United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel, as amended by UNMIK Regulation 2007/3 of 12 January 2007 (the Regulation),

Taking into account the Rules of Procedure adopted on 5 February 2008 by the Human Rights Advisory Panel pursuant to section 18 of the Regulation,

For the purpose of clarifying the character and setting of proceedings at public hearings of, the consideration of the admissibility of complaints by, and providing a deadline for the submission of any complaints to, the Human Rights Advisory Panel in view of UNMIK's diminished ability to effectively exercise executive authority in all areas from which the subject matter of human rights complaints has emanated,

Hereby promulgates the following Administrative Direction:

Section 1
Public Hearings

1.1 Public hearings of the Human Rights Advisory Panel (the Advisory Panel) shall be conducted in such manner and settings that allow a clear sense of non-adversarial proceedings to be conveyed to all participants and to the public at large, including to any media presence in case such presence is permitted by the Advisory Panel.

1.2 During Public hearings, complainants or their representative shall be permitted to make a statement summarizing the alleged human rights violation, as contained in the written submissions to the Advisory Panel. During public hearings, the Advisory Panel shall ask such questions of the parties, or their representatives, which clarify the factual basis of the complaint and are necessary for the Advisory Panel to fully assess the human rights allegations before it.

1.3 The venue and seating arrangements for public hearings conducted by the Advisory Panel shall be consistent with the non-adversarial nature of the proceedings.

Section 2 Issues of Admissibility

2.1 At any stage of the proceedings of a human rights complaint before it, the Advisory Panel shall examine all issues of admissibility of the complaint before examining the merits.

2.2 Any complaint that is, or may become in the future the subject of the UN Third Party Claims Process or proceedings under section 7 of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo of 18 August 2000, as amended, shall be deemed inadmissible for reasons that the UN Third Party Claims Process and the procedure under section 7 of Regulation No. 2000/47 are available avenues pursuant to Section 3.1 of the Regulation.

2.3 Comments on the merits of an alleged human rights violation shall only be submitted after the Advisory Panel has completed its deliberation on and determined the admissibility of such complaint. If issues of admissibility of a complaint are addressed at any time after the Advisory Panel has made a determination on admissibility of a complaint and commenced its considerations of the merits, the Advisory Panel shall suspend its deliberations on the merits until such time as the admissibility of the complaint is fully re-assessed and determined anew.

2.4 Following any new admissibility determination, the Advisory Panel shall refer such new determination to the Special Representative of the Secretary-General for the purpose of obtaining further comments on the complaint.

Section 3 Appointment and Resignation of Panel Members

3.1 The President of the European Court of Human Rights shall propose in compliance with the applicable UN procurement rules a sufficient number of suitable candidates for appointment under section 5 of UNMIK/REG/2006/12, as amended, upon receiving a request from the Special Representative of the Secretary-General. If no proposals or an insufficient number of proposals are received by UNMIK within a period of one calendar month of such request, the Special Representative of the Secretary-General may make the necessary appointment without the requested proposal and following consultation with relevant international Human Rights bodies.

3.2 In case one or more members of the Advisory Panel resign from their position, the Panel shall make no determinations until new appointments have been made allowing the Panel to reach its statutory number of members.

Section 4

Publications of the Advisory Panel

All publications, announcements and press releases of the Advisory Panel shall be made through the UNMIK Office of the Spokesperson and Public Information, which shall assist the Advisory Panel in its official announcements on all matters.

Section 5

Cut-off Date for Submission of Complaints

Notwithstanding section 3.1 of UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, no complaint to the Advisory Panel shall be admissible if received by the Secretariat of the Advisory Panel later than 31 March 2010.

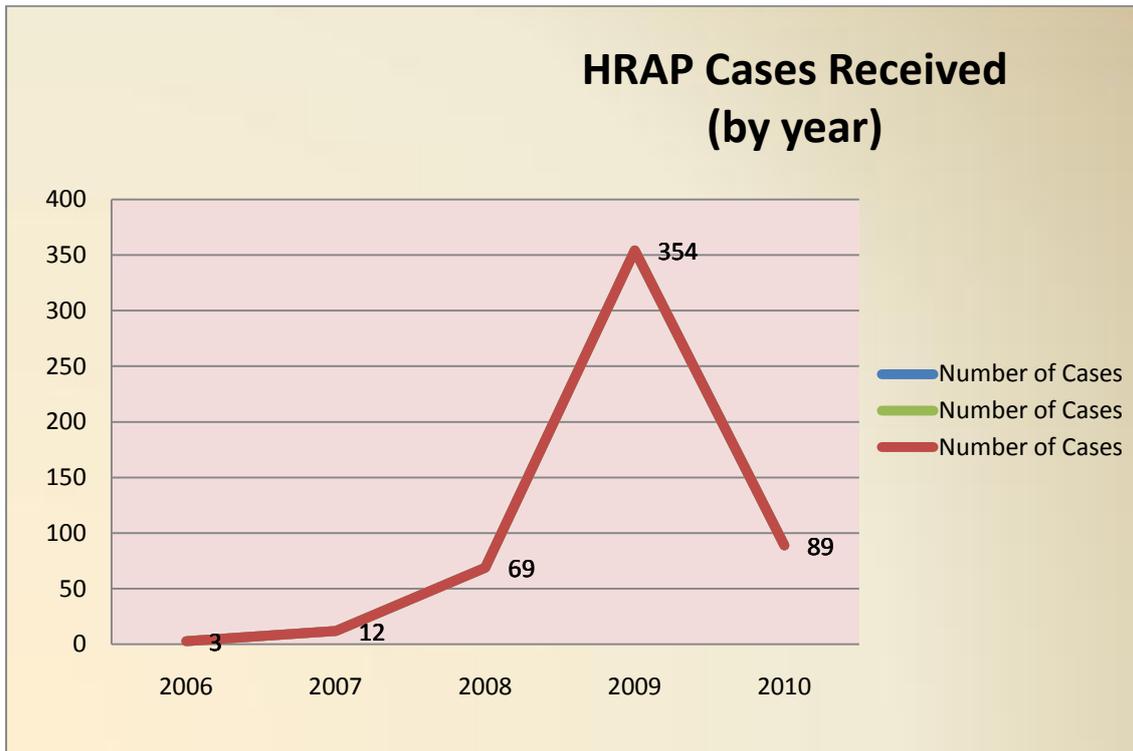
Section 6

Entry into Force

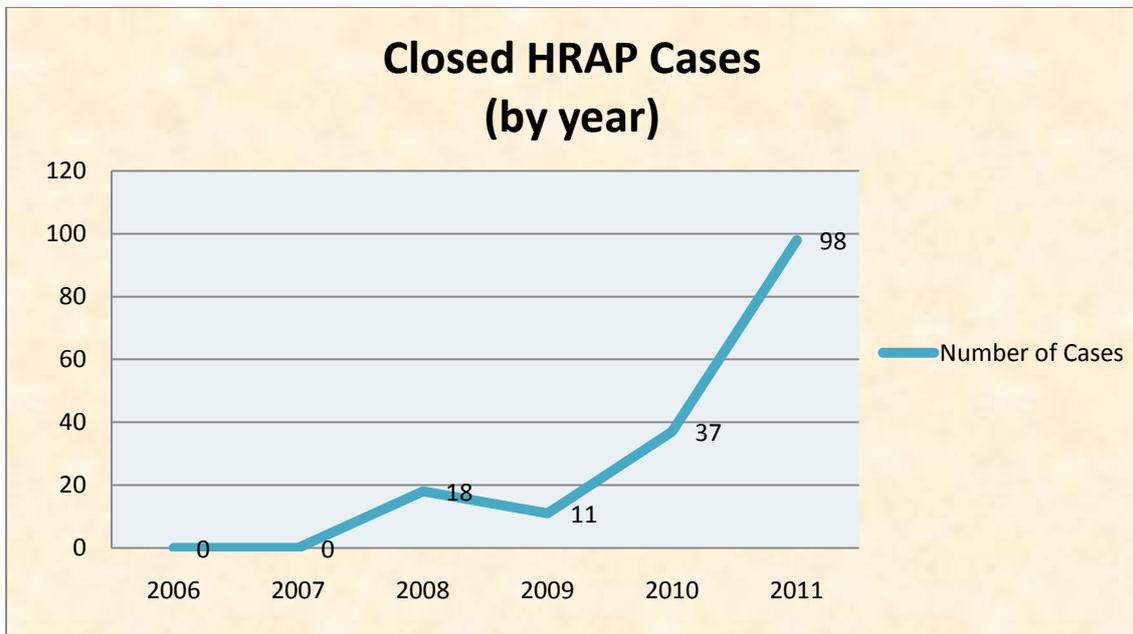
The present Administrative Direction shall enter into force on 17 October 2009 and shall be applicable for all complaints submitted to the Advisory Panel including such that are currently pending before the Advisory Panel.

Lamberto Zannier
Special Representative of the Secretary-General

Annex C: HRAP Complaints Received by Year



Annex D: Closed HRAP Cases (Inadmissible, or Opinion on the Merits) by Year



Annex E: The Human Rights Advisory Panel Case Flow Chart

