



# ***The Human Rights Advisory Panel***

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## **Annual Report 2012**



## Foreword

This was the fifth year of the Human Rights Advisory Panel's activity. Just as in 2011, the Panel issued many significant decisions and opinions, including some that expand on its previous jurisprudence. The cases are presented in detail further in the Report.

2012 was the first year since the Panel's inception when the work of the HRAP Secretariat legal and administrative staff was not hampered by shortages and a high turnover within the legal officer pool (problems that have been noted numerous times before). Ideally there would be more lawyers allocated to the Secretariat; however, should the team that successfully coalesced in 2012 remain at its full complement, it is envisioned that this small but very professional and exceptionally devoted group will produce an appropriately speedy and quality review of the remaining complaints. One of the requirements necessary to keep this team intact is external financing, heretofore provided by the government of Sweden, for which we are extremely grateful. If similar support should not be available, the Panel expects an appropriate reaction from UNMIK that will enable us to maintain the current staff.

Overall, cooperation with UNMIK in ongoing cases is proceeding quite well. The Panel has received the required comments and information in a timely manner. The replacement of former Panel member Mr Paul Lemmens with current Panel member Ms Françoise Tulkens proceeded very smoothly due to the diligent actions of both the SRSG and the President of the European Court of Human Rights.

However, the lack of appropriate and timely reactions by the SRSG as required by UNMIK Regulation 2006/12 to the Panel's opinions and recommendations continues to be a problem. The situation in this respect remains far from satisfactory and needs to be improved.

The most serious unresolved problem in cases dealt with by the Panel continues to be a lack of will within the UN system to assure appropriate compensation and other reparations to victims of human rights violations found by the Panel. Although years have passed, the situation remains unmovable. The Panel is unaware of any facts indicating that any material activities have been taken in this respect. The Panel's recommendations, especially those referring to financial compensation, are being ignored while victims are left only with the satisfaction that the Panel has vindicated their claims. This is decidedly too little and is compounded by the fact that a Panel's opinion finding violations is not even followed by a letter of apology addressed to a victim from the SRSG on behalf of UNMIK.

Just as in prior years, the Panel could effectively count on cooperation from various institutions operating in Kosovo. These included international and local agencies such as the Kosovo Property Agency, the Special Chamber of the Supreme Court, the District Public Prosecutor's Office in Pristina, as well as the regular courts. Review of numerous cases would have been far more difficult or even impossible without such cooperation due to the often insufficient amount of information received from complainants or UNMIK.

Over the past year, the Panel devoted the most of its time to complaints alleging that UNMIK failed to conduct proper and effective investigations into cases of people missing or murdered in Kosovo in 1998-2000. The Panel focused its efforts on assuring that in 2012 all such cases, i.e. over 200, were reviewed as to their admissibility. In practice, the Panel achieved this goal; all such complaints have been declared admissible. In further proceedings in respect of these cases, after supplementing the evidentiary material, the Panel began preparing opinions on the merits, the first of which was issued in December. Others will successively follow during the Panel's sessions in 2013.

Marek Nowicki  
Presiding Member  
Human Rights Advisory Panel  
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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,<sup>1</sup> 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 fifth 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 2012, it was able to have its most successful year to date in processing complaints. This annual report covers the period beginning 1 January 2012 and ending 31 December 2012, during which time the Panel conducted 11 sessions, received no new complaints,<sup>2</sup> communicated 73 cases to the SRSG for comments on the admissibility and forwarded 172 cases to the SRSG requesting comments on the merits of the complaints. During 2012, the Panel also adopted 9 opinions on the merits (concerning 23 complaints), found a further 73 complaints admissible or admissible in part, declared 66 complaints inadmissible and struck 6 complaints from the list of pending cases. Out of a total of 527 registered complaints, a few of which involved large numbers of named complainants, a total of 257 are closed, while the remaining 270 complaints are pending at various stages of the proceedings. In 2012 the Panel issued decisions and opinions for 270 cases, a 27% increase over 2011. The Panel is still awaiting UNMIK's public responses to the findings and recommendations made by the Panel to date.
3. In 2012, the Panel and the Secretariat received funding from the Swedish government to continue the support for an additional lawyer for a period of twelve months whose contract was managed by the United Nations Development Programme (UNDP). The Panel is grateful that the Swedish government subsequently agreed to use the remainder of the one-year grant money to fund the lawyer for a further three month period in 2013, again under the management of UNDP. 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 materials requiring translation.
4. On behalf of the Panel, the Secretariat liaised with the Office of the High Commissioner for Human Rights in Kosovo, Amnesty International, Human Rights Watch and the legal assistance project "Further Support to Refugees and IDPs in Serbia". In addition, the Secretariat gave presentations to visiting students from the European Master's Degree in Human Rights and Democratisation, based in Venice. To better hone its expertise on the subject matters within the Panel's purview, lawyers from the Secretariat visited the

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<sup>1</sup> Attached as Annex A.

<sup>2</sup> 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.

European Court of Human Rights in Strasbourg, France, where they liaised with lawyers within the Court's Registry who specialise in cases concerning missing and/or murdered persons or in other cases that overlap with the subject matter in complaints submitted to the Panel. These meetings proved extremely productive for the Secretariat, as the information exchanged between the lawyers highlighted the congruent nature of the jurisprudence of the two institutions.

## 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. 2006/12 as of 1 January 2012 were Mr Marek Nowicki (Poland), Mr Paul Lemmens (Belgium), and Ms Christine Chinkin (United Kingdom/Australia). On 13 September 2012, Mr Paul Lemmens who had served as a member of the Panel since its inception in January 2007, resigned from his position to join the European Court of Human Rights as a judge elected in respect of Belgium. On 13 September 2012, the SRSG appointed Ms Françoise Tulkens, the former vice-President of the European Court of Human Rights, as his successor. The Panel elected Mr Marek Nowicki as its Presiding Member in January 2008 and re-elected him as its Presiding Member in 2009, 2010, 2011 and 2012<sup>3</sup>.
6. Biographical information is provided hereunder on the members of the Panel.
7. **Marek A. Nowicki** (January 2007- present) is a Polish citizen, 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.

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<sup>3</sup> HRAP Rules of Procedure, Rule 6.

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. Currently he chairs the Council of the Foundation. 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. **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.
12. 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). From 2004-2012, she was Director of Studies of the International Law Association. She is a member of the Advisory Council of the International Centre for the Legal Protection of Human Rights in London (INTERIGHTS) and of the IBA Human Rights Council. 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).
13. 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 for 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, and of the IBA HR Council Fact-Finding Mission to Malawi on the Rule of Law in January 2012.
14. **Françoise Tulkens** (September 2012- present) a Belgian citizen, has a Doctorate in Law, a Master's degree in Criminology and a Higher education teaching certificate (*agrégation de l'enseignement supérieur*) in Law.

15. She was also a researcher at the Max Planck Institute for Foreign and International Criminal Law (Freiburg-im-Breisgau, Germany). She was a Professor at the University of Louvain (Belgium) and has taught in Belgium as well as abroad – as a Visiting Professor at the Universities of Geneva, Montreal, Ottawa, Paris I, Rennes, Strasbourg and Louisiana State University – in the fields of criminal law (general part), comparative and European criminal law, juvenile justice and human rights protection systems.
16. From November 1998 to September 2012, she was a Judge in the European Court of Human Rights, serving as Section President from January 2007 and as Vice-President of the Court from February 2011.
17. Ms Tulkens is the author of many publications in the areas of human rights and criminal law and also co-author of reference books: *Introduction au Droit Pénal: Aspects Juridiques et Criminologiques* (9<sup>th</sup> edn., 2010) and *Droit de la Jeunesse : Aide, Assistance et Protection* (2000). She is a member of editorial boards of a number of scientific journals, among which the *Revue Trimestrielle des droits de l’homme*, the *Journal des Tribunaux-droit européen*, the *Journal of International Criminal Justice* and the *Inter-American and European Human Rights Journal*.
18. She belongs to different associations and, in particular, she is a Vice-President of the International Association for Penal Law, a member of the Scientific Committee of the Brussels Bar Human Rights Institute and of the Board of Trustees of the Academy of European Law.
19. She holds honorary doctorates from the Universities of Geneva, Limoges and Ottawa. She has been an Associate Member of the Belgian Royal Academy of Sciences, Literature and Fine Arts since 2011.
20. Ms Tulkens is currently Chair of the Board of Governors of the King Baudouin Foundation.

## **2.2. Panel Member who served in 2012**

21. **Paul Lemmens** (January 2007- September 2012) is a Belgian citizen. He was a judge in the Council of State of Belgium from 1994 until September 2012. He has served both in the Council of State’s 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.
22. 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 was the director for Belgium of the European Master’s Degree Programme in Human Rights and Democratisation, a European inter-university

programme based in Venice, Italy. Mr Lemmens took up a mandate of judge in the European Court of Human Rights in September 2012.

### 2.3 Secretariat Staff

23. The Secretariat Staff consists of an Executive Officer, three legal officers and two administrative assistants.
24. **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 with the transport police department (Anapa, 1996), 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 same institution. Additionally, he has authored more than 30 publications in Russian periodicals related to different aspects of criminal investigations.
25. **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 Nation 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.
26. **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.

27. **Daniel Trup**, a British/French citizen, joined the Secretariat in June 2012 as a legal officer. Qualifying as a solicitor in 2000, Mr Trup has worked in the field of criminal law both in the United Kingdom and abroad. Prior to joining the secretariat, Mr Trup had worked for the European Union Rule of Law Mission in Kosovo as senior legal officer in the Special Prosecutors Office (2009-2012) and as legal officer in the Prosecutor's Office in the State Court of Bosnia and Herzegovina (2008-2009). Mr Trup holds an LLM in International Law from the University of Kent, and a Bachelor of Arts in Politics and History from the University of London.
28. **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 April 2000 as an administrative clerk with the UNMIK Police Department. In October 2002, she took up a position as an administrative assistant with the UNMIK Department of Justice. In March 2012, Ms Martinović's post was re-classified to legal assistant.
29. **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.

### 3. Regulatory Framework

30. 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 for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the International Covenant on Civil and Political Rights (ICCPR), 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. The Panel's temporal jurisdiction runs from 23 April 2005.<sup>4</sup>
31. 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

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<sup>4</sup> UNMIK Regulation No. 2006/12, Section 2.

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.

32. The procedure before the Panel consists of two stages<sup>5</sup>: 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, or considered them in conjunction with the merits. 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.
33. 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.<sup>6</sup> Once an opinion has been provided to the parties, it is also published on the Panel's website.<sup>7</sup> From there, the SRSG retains exclusive authority to decide whether to act on the findings of the Panel.<sup>8</sup> The decisions of the SRSG shall be published promptly in a manner that ensures broad dissemination and accessibility.<sup>9</sup>

#### 4. Panel's Website

34. The Panel's website<sup>10</sup> was upgraded further in 2012 to enable better user interface and easier access to the decisions and opinions of the Panel. The website lists cases by the complainant's name, to enable access to the Panel's decisions and opinions for a particular case. In addition, the Panel also lists its decisions and opinions by case number and date of adoption, so that interested persons can follow the evolution of the jurisprudence of the Panel. Since 2012, the website also displays the SRSG's comments on the Panel's recommendations, enabling a review of an HRAP case through its every stage. Further additions are being made to the website to improve user accessibility.

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<sup>5</sup> 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](http://www.unmikonline.org/human_rights/documents/annual_report2009.pdf), §§ 48-60.

<sup>6</sup> UNMIK Regulation No. 2006/12, Section 17.1.

<sup>7</sup> UNMIK Regulation No. 2006/12, Section 17.2.

<sup>8</sup> UNMIK Regulation No. 2006/12, Section 17.3.

<sup>9</sup> UNMIK Regulation No. 2006/12, Section 17.4

<sup>10</sup> <http://www.unmikonline.org/hrap/Eng/Pages/default.aspx>

## 5. Caseload of the Panel and Statistics

### 5.1. Statistics

35. 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 527 complaints<sup>11</sup>.
36. During the reporting period, the Panel adopted 9 opinions on the merits (concerning 23 complaints), found a further 172 complaints admissible or admissible in part, declared 66 complaints inadmissible and struck 6 complaints from the list.
37. At the end of 2012, there were 13 cases pending before the Panel at the admissibility stage, and 257 cases awaiting an opinion on the merits<sup>12</sup>. The Panel closed 95 cases in 2012. Please refer to Annex C for detailed statistics.

### 5.2. Opinions and Decisions of the Panel by Subject Matter

38. Below are a select number of decisions and opinions issued in 2012 listed according to the subject matter that are highlighted for further discussion in section 7 of this report:

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

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

- *Radmila Tomić*, 160/09 (decision of 5 April 2012)
- *Stevan Simović*, 246/09 (decision of 6 April 2012)
- *Veska Majmarević*, 324/09 (decision of 10 May 2012)
- *S.C.*, 02/09 (opinion of 6 December 2012)

##### Lack of an Effective Investigation by UNMIK Regarding a Case in Which a Death Occurred in Suspicious Circumstances

- *Uroš Barać*, 149/09 (decision of 1 October 2012)
- *R.A.*, 41/09 (decision of 21 August 2012)

#### **Right to Life – Right to an Effective Investigation – Prohibition of Torture, Inhuman or Degrading Treatment – Right to Liberty**

<sup>11</sup> This number varies slightly from previous reports as one complaint was split for technical reasons.

<sup>12</sup> In cases for which there is a partial opinion on the merits, the case is still awaiting a final opinion on the merits. Also, in 2012, the Panel re-opened 2 cases that had formerly been declared inadmissible, *Balaj and Others* and *N.M. and Others*.

Lack of an Effective Investigation by UNMIK Regarding a Missing/Murdered Person and Illegal Detention Case Related to the Hostilities

- *Kostić and Others*, 111/09 (decision of 17 August 2012)

Protesters Killed and Injured by UNMIK Police on 10 February 2007

- *Kadri Balaj and Others*, 04/07 (decision of 11 May 2012)

**Prohibition of Torture, Inhuman or Degrading Treatment – Right to Private and Family Life**

Lack of an Effective Investigation by UNMIK Regarding a Killing

- *Petar Jovičić*, 233/09 (decision of 17 March 2012)

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

UNMIK Confiscation of Protect Private Property

- *Jahja Morina*, 36/08 (opinion of 10 May 2012)

Kosovo Protection Corps Breach of Contract

- *Linda, LLC*, 45/08 (decision of 22 August 2012)
- *NTP Bujari (AS Petrol)*, 311/09 (decision of 6 December 2012)

Housing and Property Claims Commission

- *Radislav Dekić and Xhevahire Morina*, 36/09 and 37/09 (decision of 21 August 2012)
- *Miroslav Mihajlović*, 15/08 (opinion of 22 August 2012)

Kosovo Property Agency

- *Nada Mladenović*, 61/10 (decision of 6 April 2012)

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

- *Novica Jovanović and Others*, 28/10 & Others (decision of 20 January 2012)
- *Dragan Stojanović and Others*, 27/10 & Others (decision of 17 February 2012)
- *Vesna Bojković*, 40/10 (decision of 16 March 2012)

Paternity Suit

- *Marija Lalić*, 31/08 (decision of 9 June 2012)

### **Right of Access to Public Service - Right to an Effective Remedy**

#### Dismissal from Kosovo Protection Corps

- *Gani Thaçi*, 13/08 (opinion of 12 September 2012)

## **6. Trends and Issues of Note**

39. Certain trends in the caseload and practice of the Panel have remained whilst others have altered significantly from the last reporting period. In 2012, the Panel's number one priority was processing the cases regarding the alleged ineffective investigations of missing and/or murdered persons (MMP). In practice, this meant that the Panel issued decisions on admissibility for 153 MMP cases in total, and these cases have now moved to being considered on their merits. 150 of these cases were ruled admissible as to the procedural obligations of Article 2 of the ECHR, and the SRSG rarely submitted arguments against this determination.
40. In order to complete the task of processing these cases, the Panel developed new methodologies in classifying and collating data. These included creating and utilising databases containing relevant materials, as well as tailoring information gathered from the databases of the International Committee of the Red Cross (ICRC), the International Commission on Missing Persons (ICMP), and the UNMIK/EULEX Office of Missing Persons and Forensics (OMPF) for the Panel's specific purposes.
41. In December 2012, the Panel adopted its first opinion from the MMP cases. As discussed at length below (see §§ 68-70), the Panel found UNMIK had violated the procedural obligation of Article 2 of the European Convention on Human Rights due to the ineffectiveness of its investigation into the abduction and killing of the complainants' relatives. Drawing upon international jurisprudence, the Panel elaborated criteria for what constitutes an effective investigation and decided that the performance of UNMIK Police and prosecutors in this regard did not meet the international standards. In its recommendations to UNMIK, discussed more fully below (see §§ 85-86), among other forms of reparation, the Panel suggested that UNMIK formally apologise to the complainants for its dereliction of duty. This form of reparation has been encouraged by the UN General Assembly, and is used by the Inter-American Court of Human Rights in its MMP opinions. Going forward this first opinion will be useful as a leading case for many of the other similar cases.
42. Regarding these cases, the Panel received a significant number of UNMIK police files, including a cache of case files from UN HQ in New York, and other files concerning investigations into the cases of MMPs. This enabled the Panel to undertake a much deeper analysis of the facts and circumstances regarding these sensitive matters, with due regard given to their confidentiality. However, there remain a substantial number of cases for which there was little to no information available in the investigative files, or there were no

files at all, making it difficult for the Panel to ascertain a file's completeness. After repeatedly requesting files from both UNMIK and their current custodian, the EULEX Mission in Kosovo, the Panel began to consider these cases on the merits with the materials currently in its possession. In its first MMP opinion, *S.C.*, the Panel began to elaborate the inferences that should be drawn in such circumstances.

43. Another development that the Panel noted throughout 2012 regarding the MMP cases was UNMIK's response concerning the admissibility of a 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 2011 and for much of 2012, UNMIK raised objections to the admissibility of Article 3 in this context. However, towards the end of the reporting period, UNMIK no longer challenged the admissibility of Article 3 in regard to these cases.
44. Another trend worth highlighting is demonstrated in the case *Morina*, discussed in detail below (§§ 76-78). In *Morina*, the Panel recommended that the complainant be paid compensation for both pecuniary and non-pecuniary harm, as he had conclusively shown that UNMIK was responsible for the seizure of his property. However, UNMIK informed the Panel, as it had said publicly in the case *Kusić*, that "UN General Assembly resolutions do not allow the Organization or its Missions to pay compensation other than for material damage or physical harm."<sup>13</sup> More disconcerting was the lack of UNMIK's public response to the Panel's recommendations concerning compensation: in 2012, UNMIK only made public its inability to pay reparations to the victims in response to four of the Panel's opinions, despite the Panel issuing more than 20 opinions recommending that UNMIK pay the victims. This subject will be elaborated further below (§§ 88-91). However, it is worth noting that on numerous occasions, complainants have requested HRAP to inform them what to do following an HRAP opinion which recommends that UNMIK pay damages; at this time HRAP can only inform these persons to address UNMIK directly.
45. Also in 2012, the Panel had two requests to re-open proceedings, in the cases *Balaj and Others* and *N.M and Others*. In both, the Panel had declared the cases inadmissible, but had left open the possibility for the complainants to request the Panel to re-open their proceedings after they had exhausted the UN Third Party Claims Process, as required by UNMIK Administrative Direction No. 2009/1. The Panel was satisfied that the complainants had exhausted their remedies and decided to allow both complaints to be re-opened. The Panel has now moved to an assessment of the merits of both complaints. For more information, see §§ 60-61 below.
46. The Panel issued more omnibus decisions and opinions, specifically in the "14,000" cases<sup>14</sup>, where the facts were sufficiently similar enough to allow such categorisations.

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<sup>13</sup> For more information on UNMIK's reaction to the Panel's recommendations and findings in *Kusić*, HRAP case no. 08/07 see 2010 Annual Report §§ 122-124.

<sup>14</sup> 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.

Only a handful of cases remain open from this category, as the Panel has prioritised finishing these cases.

47. In 2012, the Panel and Secretariat continued to make extensive usage of other resources to collect information that it was unable to collect from the complainants' submissions to the Panel. For example, the District Public Prosecutor's Office in Prishtinë/Priština on several occasions provided the Panel with invaluable information that had been heretofore unobtainable.
48. The Secretariat also met with individual complainants as well as organisations with ties to the cases, such as the Association of the Families of the Kidnapped and Murdered in Kosova and Metohija, to gather relevant information when required. In order to accelerate the processing of some cases, the Secretariat liaised with representatives of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters 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 issue decisions and opinions for nearly all of its cases in this category. Likewise, the Panel had regular correspondence with the Kosovo Property Agency, which allowed the Panel to issue decisions and opinions for a good portion of the outstanding cases in this category.
49. In addition to the cases mentioned above, the Panel continued to process cases including concerning the following legal issues:
  - Allegations of a violation of the right to a fair trial (Article 6 § 1 of the European Convention on Human Rights (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), 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) as well as the right to an effective remedy (Article 13 of the ECHR), in relation to the seizure of

property by International Public Prosecutors and District Public Prosecutors of Gjilan/Gnjilane.

- 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 respect of Kosovo Trust Agency Matters concerning employee benefits payable through the privatisation of Socially-Owned Enterprises (SOE) as well as ownership of the SOEs.
- Allegations of a violation of the right of access to public service and right to an effective remedy (Article 2 § 3 of the International Covenant on Civil and Political Rights (ICCPR) read in conjunction with Article 25 c) of the ICCPR) in relation to decisions made the by Joint Security Executive Committee (JSEC) and the Supreme Court of Kosovo concerning a complainant's dismissal from command.

## 7. Jurisprudence of the Panel

50. 2012 marked a year when the Panel was able to make significant progress in addressing its caseload. In closing 95 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 on a number of novel procedural and substantive matters. Some important decisions and opinions issued by the Panel in 2012 are described in more detail below.

### 7.1 Admissibility Issues

#### Six-Month Rule

51. The six-month rule applies to the filing of a complaint, but does not apply to the filing of a request for reopening of proceedings. A request for reopening of proceedings must be filed within a reasonable time. See HRAP, *Balaj and Others*, no. 04/07, decision of 11 May 2012.

#### Jurisdiction *Ratione Materiae*

52. Where a complainant has no legitimate expectation of obtaining an effective enjoyment of a property right because her situation does not meet the requirements for claiming a share of the proceeds from the privatisation of her former places of employ, there is no real property right at issue and the complaint is outside of the Panel's jurisdiction *ratione materiae*. In the *Bojković* case, the complainant complained that the Kosovo Trust Agency (KTA) had violated her rights to obtain a part of the proceeds of the privatisation of two socially owned enterprises for which she had worked. But the complainant was not eligible to collect these proceeds because she had left the enterprises prior to 1999, before the KTA had jurisdiction over them. Therefore, although the complainant had submitted a claim to the KTA, the Panel found that the complainant had no "legitimate expectation" of having

her claim accepted. Thus the complaint was outside of the Panel's jurisdiction *ratione materiae*. See HRAP, *Bojković*, no. 40/10, decision of 16 March 2012.

### **Jurisdiction *Ratione Personae***

53. 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 *Jovanović and Others*, the Panel reaffirmed its prior position recalling that on 9 December 2008, UNMIK's responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
54. In the case *Jovanović and Others*, the complainants complained that the Privatisation Agency of Kosovo (PAK) had violated their rights to obtain a part of the proceeds of the privatisation of the company for which they had worked. In examining its competence *ratione personae* to deal with the complaint, the Panel noted that the PAK was an institution set up by the Kosovo authorities and thus outside the Panel's jurisdiction. Furthermore, the Panel stated that the complainants had not appealed PAK's decision to the Special Chamber of the Supreme Court of Kosovo on Trust Agency Related Matters (the Special Chamber), but even if they had, UNMIK was no longer exercising authority over the Kosovo judiciary and thus had no responsibility for any violation of human rights allegedly committed by them. As such, the complaints were outside of the Panel's jurisdiction *ratione personae*. See HRAP, *Jovanović and Others*, no. 27/10, decision of 20 January 2012.
55. Likewise, in the *Stojanović and Others* case, the Panel held that where the complainants had appealed to the Special Chamber but the Special Chamber had not yet issued a decision, the complaints were outside of the Panel's jurisdiction *ratione personae*. See HRAP, *Stojanović and Others*, no. 28/10, decision of 17 February 2012.

### **Non-Exhaustion**

56. When the subject of a complaint concerns an alleged delay in the length of proceedings, the complaint may be admissible even though all available avenues for review have not yet been pursued. In the case *Mladenović*, where the complainant complained that his claim filed with the KPA had not been finalised more than four years after he had submitted it, the Panel concluded that UNMIK's argument that the complainant had not exhausted all available remedies was not relevant in this circumstance. The Panel stated that the fact that the proceedings were still pending could not remedy the alleged violation of Article 6 § 1 of the ECHR stemming from the duration of proceedings. See HRAP, *Mladenović*, no. 61/10, decision of 6 April 2012.

### **Re-opening of Proceedings**

57. In 2012, in the case *Balaj and Others*, the Panel reaffirmed its position that complainants can request the Panel to re-open proceedings that were originally admissible *ratione temporis* when filed but were declared temporarily inadmissible by the Panel until the complainant had completed the UN Third Party Claims Process, as required by UNMIK Administrative Direction No. 2009/1. This special procedure, hereinafter referred to as the “the Balaj exception” was invoked by the Panel in order to remedy the unacceptable outcome of the strict application of Section 5 of UNMIK Administrative Direction No. 2009/1.
58. In *Balaj and Others*, the complainants had originally filed what the Panel deemed was an admissible complaint, but then the Panel’s jurisdiction was changed by UNMIK Administrative Direction No. 2009/1, which added the further hurdle of requiring a complainant to exhaust the remedies afforded by the UN Third Party Claims Process before addressing a complaint to the Panel. In a second decision finding the complaint now inadmissible, the Panel noted, “if the complainants are required to re-file a complaint after the conclusion of the UN Third Party Claims Process, they would invariably run afoul of the 31 March 2010 deadline for the submission of new complaints. The requirement of going through the UN Third Party Claims Process would in that case in effect extinguish the complaint without the possibility of the complainants resubmitting it to the Panel, despite the fact that, as the Panel found on 6 June 2008, the complaint was admissible under the regulatory framework applicable when it was filed. Such a result would offend basic notions of justice”. In 2012, the Panel concluded, over the objection of UNMIK, that since the UN Third Party Claims Process had come to an end, the complainants could request the Panel to reopen the proceedings instituted in 2007, without the cut-off deadline of 31 March 2010 being an obstacle to a continued examination of their complaint. See HRAP, *Balaj and Others*, no. 04/07, decision of 11 May 2012.
59. In the cases *Linda, LLC* and *NTP Bujari (AS Petrol)*, the Panel decided that cases that fall under the jurisdiction of UNMIK’s Local Claims Review Board are entitled to the application of the “Balaj exception” (see § 57 above), as such claims are appealable to the UN Third Party Claims Process and thus covered by UNMIK Administrative Direction 2009/1. In both cases, the complainants were entitled to file claims with UNMIK’s Local Claims Review Board. Although the Panel found them inadmissible at this stage, the Panel decided to grant the complainants the special protections afforded under the “Balaj exception”. See HRAP, *Linda, LLC*, no. 45/08, decision of 22 August 2012 and *NTP Bujari (AS Petrol)*, no. 311/09, decision of 6 December 2012.

### **Victim Status and Viability of Complaint after Receiving Compensation and Waiving Rights During Third Party Claims Process**

60. Another novel issue decided in the case *Balaj and Others* involved a complainant’s continued right to be considered a victim by the Panel, and thus to be within the Panel’s jurisdiction as referred to in Section 1.2 of UNMIK Regulation No. 2006/12. The Panel noted that although the complainants had already been compensated by the UN Third Party

Claims Process under a complaint alleging the same facts, the role of the UN Third Party Claims Process was different to the jurisdiction of the Panel. Moreover, the Panel explained that the compensation paid to the complainants was not based on any acknowledgement of a violation of the victims' human rights. Rather, it constituted an *ex gratia* payment. "The procedural duty under Articles 2 and 3 of the ECHR cannot be considered satisfied by the payment of sums of money, as compensation for the pecuniary damage suffered by the victims and their families." Therefore the Panel concluded that the complainants continued to have victim status and that their complaints remained viable and admissible. See HRAP, *Balaj and Others*, no. 04/07, decision of 11 May 2012.

61. In the *Balaj* case, the Panel also decided that the complainants did not waive their rights to receive an opinion on the merits from the Panel when they signed a release in their negotiations during the Third Party Claims Process. The release stated "I understand that this offer is in full and final settlement of all claims of every nature and kind whatsoever resulting from the above (death or injuries)." UNMIK considered that this constituted a waiver of all claims of every kind, including the complainants' rights before the Panel. The Panel disagreed and based its reasoning on the jurisprudence of the European Court of Human Rights, which has concluded that the rights engaged by Articles 2 and 3 of the ECHR are not capable of being waived under any circumstances. See HRAP, *Balaj and Others*, no. 04/07, decision of 11 May 2012.

### **Documents to be Considered**

62. Where the Panel has requested additional documentation from a complainant, the Panel is free to interpret the documents in such a light that the facts therein are given a different legal characterisation than that initially presented to the Panel in the complaint. See HRAP *Lalić*, no. 31/08, decision of 9 June 2012.

## **7.2 Substantive Issues**

### **7.2.1. Right to Life – Article 2 of the ECHR**

63. Once the International Committee of the Red Cross had communicated a victim's name to UNMIK via its memos of 12 October 2001 or 11 February 2002, UNMIK authorities had an obligation to conduct an effective investigation into the victim's disappearance pursuant to Article 2 of the ECHR. See HRAP *Tomić*, no. 160/09, decision of 5 April 2012.
64. The Panel does not separate the obligation to conduct an investigation capable of determining the fate and whereabouts of the missing person from the obligation to conduct an investigation capable of determining whether there was an unlawful disappearance and leading to the identification and punishment of those responsible for the disappearance and death of the victim. The Panel proceeds on the basis of a single continuing obligation. Obviously, however, the fact that the mortal remains of the victim have been located and subsequently identified is a significant element to be taken into account in the overall assessment of the fulfilment of the procedural obligation under Article 2 of the ECHR. See HRAP *Simović*, no. 246/09, decision of 6 April 2012.

65. Where there is no indication that UNMIK authorities were informed or otherwise became aware of a victim's death, UNMIK did not have an obligation to carry out an effective investigation into that death under Article 2 of the ECHR. See *Majmarević*, no. 324/09, decision of 10 May 2012.
66. UNMIK's duty to investigate under Article 2 of the ECHR extends beyond violent death in suspicious circumstances to all cases of death other than natural causes, whether the perpetrators are private persons, or State agents, or are unknown. See HRAP, *R.A.*, no. 41/09, decision of 17 August 2012.
67. Where nothing in the information submitted by a complainant demonstrates that he ever filed any complaint with the relevant UNMIK authorities with regard to his suspicions about the circumstances surrounding a death, the Panel considered that under the circumstances UNMIK did not have an obligation to carry out an effective investigation into the death under Article 2 of the ECHR. See *Barać*, no. 149/09, decision of 1 October 2012.
68. In the case, *S.C.* the Panel had to determine whether UNMIK had conducted an effective investigation as required by Article 2 of the ECHR. There, the complainant alleged that two relatives were abducted and killed by KLA members in 1999; their killers were never identified or brought to justice. UNMIK argued that an effective investigation was carried out in relation to the abduction and killing of the victims; however, due to minimal information and available leads, no concrete results could be achieved. After reviewing the record, the Panel disagreed. "Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that basic investigative steps, such as interviewing the complainant and witnesses to the abduction, had not yet been carried out. In addition, the Panel considers that, as those responsible for the crime had not been located, UNMIK was obligated to use the means at its disposal to regularly review the progress of the investigation to ensure that no new facts had come to light, as well as to inform the relatives of [the victims] regarding any possible new leads of enquiry. The Panel notes that the case, which in the meantime had been classified as "inactive" pending new information, was further reviewed in October and November 2007 respectively. However, the Panel deems that both reviews were far from being adequate. In fact, the reviewing investigators did not identify the evident gaps in the investigation thus far and mistakenly reported that [the victims] were still missing."
69. The Panel considered that not all reasonable steps were taken by UNMIK to identify the perpetrators and to bring them to justice. In this sense the Panel considered that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness as required by Article 2.
70. The Panel also had to make a determination as to whether UNMIK had met the public scrutiny requirements of an Article 2 compliant investigation. It decided that UNMIK did not. "The Panel recalls that Article 2 also requires the victim's next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests. The

Panel notes that, according to the information submitted to the Panel, the complainant's family (her son) was contacted only once by UNMIK, with respect to the handover of the bodies of [the victims] in 2003... no statement was ever taken from the complainant and no information was given to her concerning the status of the investigation, including that the case had been classified in 2005 as 'inactive'. The Panel therefore considers that the investigation was not accessible to the complainant's family as required by Article 2." In light of these deficiencies and shortcomings, the Panel concluded that UNMIK had failed to carry out an adequate and effective investigation into the abduction and killing of the complainant's husband and son, in violation of Article 2 of the ECHR. See *S.C.*, no. 02/09, opinion of 6 December 2012.

### **7.2.2. Right to Liberty – Article 5 of the ECHR**

71. Just as where UNMIK had a duty to investigate serious violations of human rights under Article 2 of the ECHR, UNMIK had a similar duty to investigate the circumstances of the abductions and detentions, allegedly committed against the complainants in violation of Article 5 of the ECHR. The Panel therefore considered specifically that UNMIK's alleged failure to conduct an effective investigation into the circumstances of abduction and illegal detention of civilians during a KLA operation represented a continuing violation of the victims' rights guaranteed under Article 5 of the ECHR, and the complaint was therefore admissible. See HRAP, *Kostić and Others*, nos. 111/09 et al, decision of 17 August 2012.

### **7.2.3. Right to Respect for Private and Family Life – Article 8 of the ECHR**

72. A disappearance of a person's mortal remains, thereby denying the possibility of burial in the family tomb and marking of the grave may evidence a violation of Article 8 of the ECHR. See HRAP, *Jovičić*, no. 233/09, decision of 17 March 2012.

### **7.2.4. Right to a Fair Trial – Article 6 § 1 of the ECHR**

#### **Right of Access to a Court**

73. The complainant is considered under "charge" for the purposes of Article 6 § 1 of the ECHR, *i.e.* the right of the complainants to have their claims determined by courts, from when a search and confiscation order is served on him. The fact that the criminal report against the complainant is eventually rejected does not remove the protections of Article 6 § 1 of the ECHR. See HRAP, *Morina*, no. 36/08, opinion of 10 May 2012.

#### **Fairness of Proceedings**

74. Although as a general rule, the right to a public hearing entails an entitlement to an oral hearing, where it was in the public interest that the adjudication of the complainant's claim was done through a mass claims process by the Housing and Property Claims Commission (HPCC) without an oral hearing, his right to a fair trial guaranteed by Article 6 § 1 of the ECHR was not violated. See HRAP *Dekić and Morina*, nos. 36/09 and 37/09, decision of 21 August 2012.

### **Length of Proceedings**

75. In the case *Mihajlović*, the Panel decided that the Housing and Property Directorate (HPD) had executed the decision of the HPCC ordering repossession of the complainant's property within a reasonable time, and therefore had complied with the requirements of Article 6 § 1 of the ECHR concerning length of proceedings. Specifically, the Panel found that the complainant had not provided the Panel with evidence that the property had not been properly sealed by the HPD following an eviction. Any person who subsequently entered the sealed property was subject to removal by the law enforcement authorities and not the HPD, as the HPD had discharged its duties under the law. In this regard, the Panel noted that there was no indication in the complaint or subsequent submissions to the Panel that the complainant had contacted the law enforcement authorities to report that his property had been illegally occupied. Thus, despite the fact that the whole process from the complainant filing his claim with the HPCC for repossession of his property until he received constructive possession had taken nearly ten months, the complainant had agreed that HPD/KPA was absolved of any further obligation regarding the property after it had carried out the eviction and sealing of the property. The Panel regretfully noted that while there had been no violation of Article 6 § 1 of the ECHR, the complainant had been left unable to repossess his property. The Panel observed that "this factual situation is not unusual and notes that the system established for gaining repossession of property for persons displaced from Kosovo has been onerous and fraught with uncertainties." See HRAP, *Mihajlović* no 15/08, opinion of 22 August 2012.
76. However, in the case *Morina*, the Panel found that through the the inactivity of the International Public Prosecutors and District Public Prosecutors of Gjilan/Gnjilane and Prishtinë/Priština, UNMIK had violated the complainant's right to a fair and public hearing within a reasonable time, guaranteed by Article 6 § 1 of the ECHR. In *Morina*, the complainant had his property seized by UNMIK during a criminal investigation that began in 2002 and was dismissed in 2008; his property was never returned. The Panel found that for the duration of its jurisdiction over the complaint, from April 2005 until 2008, more than three years had passed during which the complainant was unable to contest the seizure of his property. The Panel concluded that this length of time was excessive and failed to meet the "reasonable-time" requirement of Article 6 § 1 of the ECHR. See HRAP, *Morina*, no. 36/08, opinion of 10 May 2012.

#### **7.2.5. Right to Protection of Property - Article 1 of Protocol No. 1 to the ECHR and Right to an Effective Remedy - Article 13 of the ECHR**

77. In the *Morina* case, the complainant argued that upon dismissal of the charges against him, UNMIK authorities did not return the goods they had confiscated during the investigation, as prescribed by the law, which was a violation of his right to property guaranteed by Article 1 of Protocol No. 1 to the ECHR. The complainant had been operating a store selling ammunition for hunting. His property was seized after a criminal investigation was commenced against him; his property was never returned, even after the investigation was terminated in 2008. After reviewing the record, the Panel concluded that there was no basis

under the applicable law for not returning the temporarily confiscated goods to the complainant after the charges against him were dismissed. Therefore, UNMIK had violated his right to property guaranteed by Article 1 of Protocol No. 1 to the ECHR.

78. The Panel had to determine whether the complainant's right to an effective remedy guaranteed by Article 13 of the ECHR had been violated as well. The complainant argued that during and after the termination of the investigation against him, he did not have effective remedies to put a halt to the confiscation. The Panel noted that there was no mechanism available to the complainant that would have allowed him to claim compensation for wrongful acts allegedly committed by the judicial authorities. Therefore, the Panel concluded that there had been a violation of Article 13 of the ECHR. See HRAP, *Morina*, no. 36/08, opinion of 10 May 2012.
79. Where under United Nations Security Council Resolution No. 1244 of 10 June 1999 an international civil presence was established in order to provide an interim administration, the "national authority" within the meaning of Article 13 of the ECHR would inevitably have to be an authority set up by that international administration, or at least under its control. As UNMIK established the HPCC, the HPCC is considered a "national authority", within the meaning of Article 13 of the ECHR. See HRAP, *Dekić and Morina*, nos. 36/09 and 37/09, decision of 21 August 2012.

**7.2.6. Right of Access to Public Service and Right to an Effective Remedy - Article 2 § 3 of the ICCPR, in combination with Article 25(c) of the ICCPR**

80. In the *Thaçi* case, the Panel had to decide whether the rights of the complainant were violated when he was unable to properly challenge his demotion, suspension, and dismissal from his post. The complainant was a former commander in the Kosovo Protection Corps (KPC), who had been demoted and subsequently suspended in 2001 for major acts of non-compliance with the relevant law, specifically for making unauthorised statements to the media about the KPC and for an unauthorised absence from work. On an unspecified date in 2001, he was dismissed by the Joint Security Executive Committee (JSEC), at that time the highest body for security coordination between UNMIK and KFOR. According to the complainant, on 15 July 2005, he filed an appeal against his dismissal through his chain of command but he did not get a response until March 2006, when his appeal was denied on procedural grounds. He appealed that response to the Supreme Court of Kosovo, but it also rejected his appeal, claiming that it did not have jurisdiction over the matter as the JSEC and the KPC were immune from the jurisdiction of the Supreme Court
81. After noting that that a disciplinary sanction had been imposed on the complainant without any apparent indication that attention had been paid to his comments on the charges, the Panel reviewed the relevant case law of the UN Human Rights Committee and found that the disciplinary proceedings, leading to the dismissal of the complainant from the KPC, did not respect the requirements of basic procedural fairness. Therefore, the proceedings failed to respect the complainant's fundamental right of access to public service and thus were a violation of Article 2 § 3 of the ICCPR read in conjunction with Article 25(c) of the ICCPR. The Panel also found that although a right to appeal against the dismissal was open

in theory, and the complainant had made use of that right, the appeal did not lead to a fresh examination of the charges against the complainant. The Panel considered that the lack of action on the appeal amounted to a failure to respect the complainant's fundamental right to an effective remedy for the violation of his right not to be arbitrarily dismissed from public service.

82. Concerning the complainant's appeal to the Supreme Court, UNMIK had argued that the complainant had at all times access to legal remedies provided for in the various stages of the proceedings. By filing an appeal with the Supreme Court, he actually made use of administrative and judicial remedies, and was not denied access to them. The Panel agreed with UNMIK on this point, deciding that in giving effect to the immunity of the JSEC and the KPC from jurisdiction of the Kosovo courts, the Supreme Court did not act in violation of the complainant's right to an effective remedy. The Panel stated that "the immunity granted to UNMIK and KFOR relates to acts or omissions attributable to the JSEC and the KPC. These are two organs directly concerned with the security issues for which UNMIK and KFOR were set up. There is therefore no room for any possible derogation from the principles relating to the immunity of the United Nations in security issues..." See HRAP, *Thaçi*, no. 13/08, opinion of 12 September 2012.

## **8. Recommendations of the Panel**

83. In 2012, the Panel adopted a number of opinions on the merits where it found violations of human rights for which UNMIK was responsible. This year, as in 2011, the Panel found it somewhat problematic as to what recommendations it should 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 complainants.
84. In some instances, the Panel recommended pecuniary and non-pecuniary compensation for the violation (see HRAP, *Morina*, no. 36/08, opinion of 10 May 2012). In 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 No. 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 to prompt further action. The Panel used this formula in *Lajović 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, *Lajović and Others*, no. 09/08 and others, opinion of 9 June 2012.

85. In another circumstance, in the case *S.C.* (referred to in §§ 68-70 above), the Panel found that UNMIK had committed a violation of Article 2 of the ECHR, specifically by failing to carry out an adequate and effective investigation into the abduction and killing of the complainant's husband and son. This was the first opinion in which the Panel had found this serious violation. In this case, the Panel took a wider view of reparations and recommended that UNMIK obtains assurances that the investigations would be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the disappearance and killing of the victims will be established and that perpetrators will be brought to justice; the complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary. In addition, the Panel recommended that UNMIK publicly acknowledges, within a reasonable time, responsibility with respect to its failure to adequately investigate the disappearance and killing of the victims and makes a public apology to the complainant and her family in this regard. The Panel also recommended that UNMIK pay adequate compensation to the complainant for the moral damage suffered due to UNMIK's failure to conduct an effective investigation.
86. The Panel also recommended that UNMIK takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict. Finally, the Panel recommended that UNMIK takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring. For the first time, the Panel gave recommendations that urged UNMIK to seek systemic responses to the human rights violation. The Panel hopes for an appropriate reaction from UNMIK to this opinion.
87. In every complaint to date in which the Panel has found a violation, the Panel has recommended that UNMIK takes 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.

## **9. UNMIK's Continued Lack of Public Reactions to the Panel's Recommendations**

88. The Panel notes that Section 17.3 of UNMIK Regulation No. 2006/12 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 has published 23 press releases in response to the 92 opinions adopted by the Panel. This means that UNMIK gave only 6 public reactions to

the 66 opinions the Panel issued in 2011 and 2012 in which the Panel found violations of human rights attributable to UNMIK. In its 2011 Annual Report, the Panel voiced its concern about UNMIK's lack of public reaction to the Panel's recommendations and this Annual Report the Panel re-iterates this concern. However, UNMIK's response of only ever publishing just 23 press releases, and only 6 in the last two years, seems to show a reluctance to comply with this Regulation.

89. The Panel has no choice but to ask the SRSG to renew UNMIK's obligations toward both the complainants and the general public and to issue and publish its response to the Panel's findings and recommendations. As the Panel has said in its Annual Report 2011, without such a reaction the totality of the process envisioned by UNMIK Regulation No. 2006/12 does not conclude. Furthermore, besides being incomplete, the process becomes somewhat arcane and academic. In contrast, if the full juridical exercise is completed, whereby the Panel reviews allegations of violations of human rights by UNMIK, issues public opinions on its findings and recommendations followed by a public response from UNMIK, this process would ensure some transparency and accountability for UNMIK's actions. This might also set a standard for future UN Missions. If UNMIK were to accept that it does bear some responsibility and find it appropriate to use its limited reserved capacity to attempt to rectify these violations, such outcomes should be made known. Whatever UNMIK believes, the Panel urges the SRSG to engage with both the complainants and the general public.
90. It is worth noting that in the four instances when the SRSG did respond to the Panel's recommendations in 2012, the responses contained the same boilerplate language that he used three years earlier in response to the *Kusić* case, mentioned in § 43 above.<sup>15</sup> For example, in the case *Felegi*, where the Panel had recommended compensation for unreasonable delay in court proceedings in violation of Article 6 of the ECHR, in November 2012, the SRSG said,

“In relation to the Panel's recommendation to award adequate compensation to the Complainants, the Panel is aware that current United Nations General Assembly instructions on compensations do not permit the United Nations Organization and its missions to pay compensation other than for material damage or physical harm. Consequently, UNMIK is not in a position to pay any compensation for human rights violations that may have occurred in these matters. UNMIK will continue to draw the attention of the United Nations General Assembly to the need for a review of the current compensation rules, which exclude payment of compensation for non-pecuniary damage.”

91. If UNMIK had requested some review of the UN's compensation rules, in order to rectify this deficiency in the UN's compensation scheme, the Panel has not been made aware of that fact. The Panel repeats its expectations that UNMIK takes up this important matter within the UN with the appropriate vigour in the coming year.

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<sup>15</sup> 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>.

**10. 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 Statistical Table
- Annex D: HRAP Decisions and Opinions Issued in 2012
- Annex E: HRAP Complaints Received by Year
- Annex F: HRAP Closed Cases (Inadmissible, or Opinion on the Merits) by Year
- Annex G: Abbreviations and Acronyms

Annex A:

**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<sup>16</sup>. 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

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<sup>16</sup> The term in office for Panel Members was reduced to one year, renewable, by the UNMIK Regulation No. 2007/3 of 12 January 2007.

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:

**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:

<b>HRAP Caseload, Communications &amp; Determinations (as of 31 December 2012)</b>									
<b>Caseload</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Total</b>	
Received	3	12	69	353	90 <sup>17</sup>	n/a	n/a	<b>527</b>	
Closed	0	0	18	11	35 <sup>18</sup>	98	95	<b>257</b>	
Pending	3	15	66	407	459	362	270	<b>270</b>	
<b>Communications</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Total</b>	
Communicated to SRSG	0	0	30	71	60	117	73	<b>351</b>	
Responses from SRSG	0	0	18	75	30	100	104	<b>327</b>	
Pending Response from SRSG	0	0	12	8	38	55	24	<b>24</b>	
<b>Determinations by Type</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Total</b>	
Total	0	0	32	26	84	213	270	<b>625</b>	
Admissibility Decisions	0	0	28	22	56	164	238	<b>508</b>	
Partial Admissibility Decisions	0	0	2	0	1	0	0	<b>3</b>	
Strike off the List	0	0	0	3	5	2	6	<b>16</b>	
Opinions on the Merits	0	0	1	0	22	46	23	<b>92</b>	
Partial Opinions on the Merits	0	0	0	1	0	0	0	<b>1</b>	
Decisions on Revision and Re-opening	0	0	1	0	0	1	3	<b>5</b>	
<b>Determinations by Finding</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Total</b>	
<b>Decisions</b>	Admissible	0	0	11	2	16	63	112	<b>204</b>
	Partially Admissible	0	0	2	9	25	51	60	<b>147<sup>19</sup></b>
	Inadmissible	0	0	17	8	10	50	66	<b>151</b>
Opinions: Violation	0	0	1	0	21	45	21	<b>88</b>	
Opinions: No Violation	0	0	0	1	1	1	2	<b>5<sup>20</sup></b>	
Requests for Revision:	Refused	0	0	1	0	0	1	1	<b>3</b>
	Granted	0	0	0	0	0	0	2	<b>2</b>

<sup>17</sup> Following the Panel's review, the case no. 25/10 was split into two cases (new case no.90/10).

<sup>18</sup> The cases nos 04/07 and 26/08, previously declared inadmissible in 2010, have been re-opened by the Panel.

<sup>19</sup> Three of them, two of 2008 and one of 2010, are partial admissibility decisions.

<sup>20</sup> One of them is a partial opinion on merits.

## Annex D: HRAP Decisions and Opinions issued in 2012 (in chronological order)

**Decisions - Admissible:**

1. *Dragica Majstorović and Slavica Stevanović, 42/09 and 128/09* – decision of 17 Feb 2012.
2. *Zlatibor Ljušić and Zoran Ljušić, 70/09 and 108/09* – decision of 17 February 2012
3. *Radivoje Radisavljević, 156/09* – decision of 17 February 2012
4. *Ivica Marković, 06/10* – decision of 19 February 2012
5. *M. S., 110/09* – decision of 16 March 2012
6. *Milisav Gogić, 135/09* – decision of 16 March 2012
7. *Radojka Šćekić, 212/09* – decision of 16 March 2012
8. *Petar Jovičić, 233/09* – decision of 17 March 2012
9. *Luka Anđelković, 277/09* – decision of 5 April 2012
10. *Stevan Simović, 246/09* – decision of 6 April 2012
11. *Snežana Simonović, 258/09* – decision of 10 May 2012
12. *Žaklina Folić and Others, 58/09, 59/09, 60/09, 62/09, 215/09 and 217/09* – decision of 10 May 2012
13. *Srboljub Mitić and Others, 63/09, 64/09, 65/09, 66/09, 109/09, 113/09, 162/09, 300/09 and 301/09* – decision of 10 May 2012
14. *Rosanda Kabaš, 78/98* – decision of 11 May 2012
15. *Nedeljka Kljaić, 80/09* – decision of 10 May 2012
16. *Kata Jovanović, 84/09* – decision of 11 May 2012
17. *Miluša Jošanović, 124/09* – decision of 10 May 2012
18. *Živka Čungurović, 131/09* – decision of 10 May 2012
19. *Marko Marković, 142/09* – decision of 11 May 2012
20. *Slavica Zogović, 152/09* – decision of 10 May 2012
21. *Momir Milenković, 176/09* – decision of 10 May 2012
22. *Radmila Marković, 214/09* – decision of 11 May 2012
23. *Draginja Vujačić, 226/09* – decision of 11 May 2012
24. *Blagica Ničić, 228/09* – decision of 10 May 2012
25. *Raza Shala, 243/09* – decision of 11 May 2012
26. *Vesna Čelić, 260/09* – decision of 11 May 2012
27. *Jeremija Šuljinić, 276/09* – decision of 11 May 2012
28. *Momčilo Voštić, 279/09* – decision of 10 May 2012
29. *Milorad Andrejević, 282/09* – decision of 10 May 2012
30. *Suzana Ljumović, 285/09* – decision of 10 May 2012
31. *Nebojša Grujić, 287/09* – decision of 10 May 2012
32. *Dušica Stojković, 290/09* – decision of 10 May 2012
33. *Zorica Stanković, 304/09* – decision of 10 May 2012
34. *Stana Popović, 56/09* – decision of 22 May 2012
35. *Bojana Lazić, 261/09* – decision of 9 June 2009
36. *P. S., 48/09* – decision of 9 June 2012
37. *Lela Nikolić, 72-76/09* – decision of 21 June 2012
38. *Ljubomir Artonović, 136/09* – decision of 9 June 2012
39. *Sava Jovanović, 213/09* – decision of 9 June 2012
40. *Slobodanka Spasić and Others, 221/09, 273/09 and 336/09* – decision of 9 June 2012

41. *Mira Bulatović*, 275/09 – decision of 9 June 2012
42. *R. A.*, 41/09 – decision of 21 August 2012
43. *Živanka Patrnogić and Vesna Vojnović*, 143/09 and 247/09 – decision of 21 August 2012
44. *Ljliana Mitrović and Others* 144/09, 158/09, 209/09 and 210/09 – decision of 23 August 2012
45. *Gordana Bucalo and Others* 148/09, 150/09, 151/09, 161/09 – decision of 23 August 2012
46. *Sonja Korićanin*, 167/09, 174/09, 175/09 – decision of 23 August 2012
47. *Snežana Milenković and Momčilo Milenković*, 168/09, 169/09, 312/09- decision of 17 August 2012
48. *Gordana Janičević*, 216/09 – decision of 17 August 2012
49. *Ranko Janjić*, 220/09 – decision of 17 August 2012
50. *Vekoslav Ristić*, 224/09 & 225/09 – decision of 23 August 2012
51. *Z. B.*, 229/09 – decision of 17 August 2012
52. *D. Š.*, 244/09 – decision of 23 August 2012
53. *Predrag Joksimović*, 283/09 – decision of 23 August 2012
54. *Marija Stevanović*, 289/09 – decision of 23 August 2012
55. *Božidar Jovanović, and Others* 293/09 – decision of 21 August 2012
56. *Verica Ilić*, 303/09 – decision of 23 August 2012
57. *Budimir Maslar*, 333/09 – decision of 17 August 2012
58. *Ru. R.*, 340/09 – decision of 17 August 2012
59. *Aleksandar and Ljubinka Marković*, 91/09 & 338/09 – decision of 12 September 2012
60. *Gavrilo Milosavljević*, 163/09 – decision of 12 September 2012
61. *Verica Pekić*, 15/10 – decision of 12 September 2012
62. *Slađana Remištar*, 245/09 – decision of 26 September 2012
63. *Dušanka Trifunović*, 297/09 – decision of 26 September 2012
64. *Radoje Đuričić*, 104/09 & 159/09 – decision of 26 September 2012
65. *Spesa Marković*, 227/09 – decision of 26 September 2012
66. *Radomir Pantović*, 239/09 – decision of 26 September 2012
67. *Bljana Kuzmanović*, 262/09 – decision of 26 September 2012
68. *Slobodan Škripac*, 266/09 – decision of 26 September 2012
69. *Milijana Vuksanović*, 270/09 – decision of 26 September 2012
70. *Nedeljko Ivković*, 281/09 – decision of 26 September 2012
71. *Ljubinko Vasić and Malina Vukić*, 291/09 and 292/09 - decision of 26 September 2012
72. *Bogoljub Šmigić*, 264/09 & 265/09 – decision of 21 November 12
73. *Ranko Milenković*, 255/09 – decision of 21 November 12
74. *Dragomir Jelić*, 288/09 – decision of 6 December 2012
75. *Zlatana Milanović*, 339/09 – decision of 6 December 2012

#### **Decisions - Admissible in Part:**

1. *Božidarka Felegi*, 32/08 – decision of 20 January 2012
2. *Olga Lajović*, 09/08 – decision of 19 February 2012
3. *Vlainka Ristić*, 269/09 – decision of 17 February 2012
4. *Dragiša Đurašković*, 41/08 – decision of 16 March 2012
5. *Svetlana Marinković*, 203/09 – decision of 16 March 2012

6. *Vesna Antić*, 100/09 – decision of 15 April 2012
7. *Radmila Tomić*, 160/09 – decision of 5 April 2012
8. *M.S. and Others*, 122/09, 157/09, 184/09, 192/09, 193/09, 202/09, 204/09, 337/09, 347/09, 348/09, and 66/10 – decision of 5 April 2012
9. *Dijana Živković*, 71/09 – decision of 10 May 2012
10. *Anka Cvijanović*, 170/09 – decision of 11 May 2012
11. *Nenad Mladenović*, 171/09 – decision of 11 May 2012
12. *Olivera Budimir*, 219/09 – decision of 11 May 2012
13. *Marija Lalić*, 31/08 – decision of 10 June 2012
14. *Desanka Stanišić and Zoran Stanišić*, 34/08 – decision of 21 June 2012
15. *Muharem Ibraj*, 14/09, 15/09, 18/09, 19/09, 20/09 – decision of 9 June 2012
16. *Zvonimir Ristić*, 10/08 – decision of 22 August 2012
17. *Bogoljub Kostić and Others* 111/09, 117/09, 178/09, 179/09, 180/09, 230/09, 231/09, 232/09, 240/09, 241/09, 253/09, 254/09, 263/09, 284/09 and 286/09 – decision of 17 August 2012
18. *B.K.*, 85/10 – decision of 22 August 2012
19. *Budimirka Mirić et al*, 68/09, 83/09, 235/09, 236/09 & 256/09 – decision of 17 August 2012
20. *Lidija Milenković*, 153/09 & 181/09 – decision of 17 August 2012
21. *Stanoje Ristić*, 343/09 & 344/09, *Group XXXI* – decision of 17 August 2012
22. *Petra Kostić*, 194/09 – decision of 16 September 2012
23. *Kenan Čelić and Enver Fazlija*, 51/09 & 53/09 – decision of 26 September 2012
24. *Nevenka Ristić*, 319/09 – decision of 26 September 2012
25. *T. P.*, 88/10 – decision of 27 September 2012
26. *Vladimir Manohin*, 27/09 – decision of 6 December 2012
27. *Snežana Marković*, 349/09 – decision of 6 December 2012

#### **Decisions - Inadmissible:**

1. *Dane Trbovic*, 10/10 – decision of 20 January 2012
2. *Novica Jovanović and Others*, 28/10, 70/10, 73/10, 76/10 and 77/10 – decision of 20 January 2012
3. *Tomislav Jovanović*, 53/10 – decision of 20 January 2012
4. *Nenad Milentijević*, 23/10 – decision of 17 February 2012
5. *Slaviša Dobrosavljević and Others*, 26/10, 39/10 and 83/10 – decision of 17 February 2012
6. *Dragan Stojanović and Others*, 27/10, 41/10, 44/10 and 46/10 – decision of 17 February 2012
7. *Milutin Bojković*, 42/10 – decision of 17 February 2012
8. *Nebojša Košanin*, 52/10 – decision of 17 February 2012
9. *Javorka Miličević*, 346/09 – decision of 16 March 2012
10. *Vesna Bojković*, 40/10 – decision of 16 March 2012
11. *Zurap Ibrahim*, 86/10 – decision of 16 March 2012
12. *Slavica Dimić*, 87/10 – decision of 16 March 2012
13. *Ljiliana Šljivić-Čeanić*, 197/09 – decision of 5 April 2012
14. *Nada Mladenović*, 61/10 – decision of 6 April 2012
15. *Bajram Butaja*, 82/10 – decision of 6 April 2012

16. *Dragan Kalaba*, 84/10 – decision of 6 April 2012
17. *R. Š.*, 82/09 – decision of 11 May 2012
18. *Radmila Marković*, 187/09 – decision of 11 May 2012
19. *Veska Majmarević*, 324/09 – decision of 10 May 2012
20. *Zorica Bojković*, 79/10 and *Dejan Bojković*, 80/09 – decision of 11 May 2012
21. *Svetislav and Stana Krstić*, 49/08 & 50/08 – decision of 9 June 2012
22. *Linda, LLC*, 45/08 – decision of 22 August 2012
23. *Radoslav Dekić and Xhevahire Morina*, 36/09 & 37/09 – decision of 21 August 2012
24. *Faik Jašari*, 119/09 – decision of 17 August 2012
25. *Dragomir Jelić*, 185/09 – decision of 17 August 2012
26. *Zlatibor Ljušić*, 196/09 – decision of 17 August 2012
27. *Božidarka Buha*, 243/09 – decision of 17 August 2012
28. *Mira Bulatović*, 274/09 – decision of 22 August 2012
29. *H. H.*, 295/09 – decision of 17 August 2012
30. *Miloš Jokić*, 322/09 – decision of 22 August 2012
31. *M. N.*, 01/10 – decision of 22 August 2012
32. *Florije Pervizaj*, 12/10 – decision of 17 August 2012
33. *Čedomila Radović*, 19/10 – decision of 22 August 2012
34. *D. V.*, 24/10 – decision of 17 August 2012
35. *Lj. N.*, 89/10 – decision of 22 August 2012
36. *Ismet and Bahri Hoxha*, 306/09 – decision of 12 September 2012
37. *Nadica Vojnović*, 29/09 – decision of 26 September 2012
38. *N. L.*, 298/09 – decision of 26 September 2012
39. *Dušanka Dodić*, 90/10 – decision of 26 September 2012
40. *Uroš Barać*, 149/09 – decision of 1 October 2012
41. *Biljana Kuzmanović*, 195/09 – decision of 21 November 2012
42. *Verica Ničetić*, 199/09 – decision of 21 November 2012
43. *Kata Jovanović*, 200/09 – decision of 21 November 2012
44. *Đurđana Lazić*, 201/09 – decision of 21 November 2012
45. *Osman Ramadani and Others*, 307/09 & 309/09 – decision of 21 November 2012
46. *Dušanka Dodić*, 25/10 – decision of 21 November 2012
47. *B. D.*, 129/09 – decision of 6 December 2012
48. *Verica Tomanović*, 191/09 – decision of 6 December 2012
49. *Velibor Jokić*, 323/09 – decision of 6 December 2012
50. *Katarina Arsić*, 18/10 – decision of 6 December 2012
51. *Slavica Dimić and Ivan Đošić*, 56/10 and 60/10 – decision of 6 December 2012
52. *NTP Bujari (AS Petrol)*, 311/09 – decision of 6 December 2012
53. *Jasmina Adžić*, 75/10 – decision of 6 December 2012

#### **Decisions to Strike Out:**

1. *Vladimir Šćepanović*, 271/09 – decision of 17 February 2012
2. *Radomir Pantović*, 188/09 – decision of 16 March 2012
3. *Radomir Pantović*, 189/09 – decision of 16 March 2012
4. *Radojka Šćekić*, 211/09 – decision of 16 March 2012
5. *Angelina Kostić*, 134/09 and 259/09 – decision of 17 August 2012

**Decisions on request to re-open Proceedings:**

1. *Mon Balaj et al*, 04/07 – decision to re-open proceedings, granted, adopted on 11 May 2012
2. *N.M. and Others*, 26/08 – decision to re-open proceedings, granted, adopted on 10 June 2012
3. *Dane Trbović*, 10/10 – decision to re-open proceedings, rejected, adopted on 27 September 2012

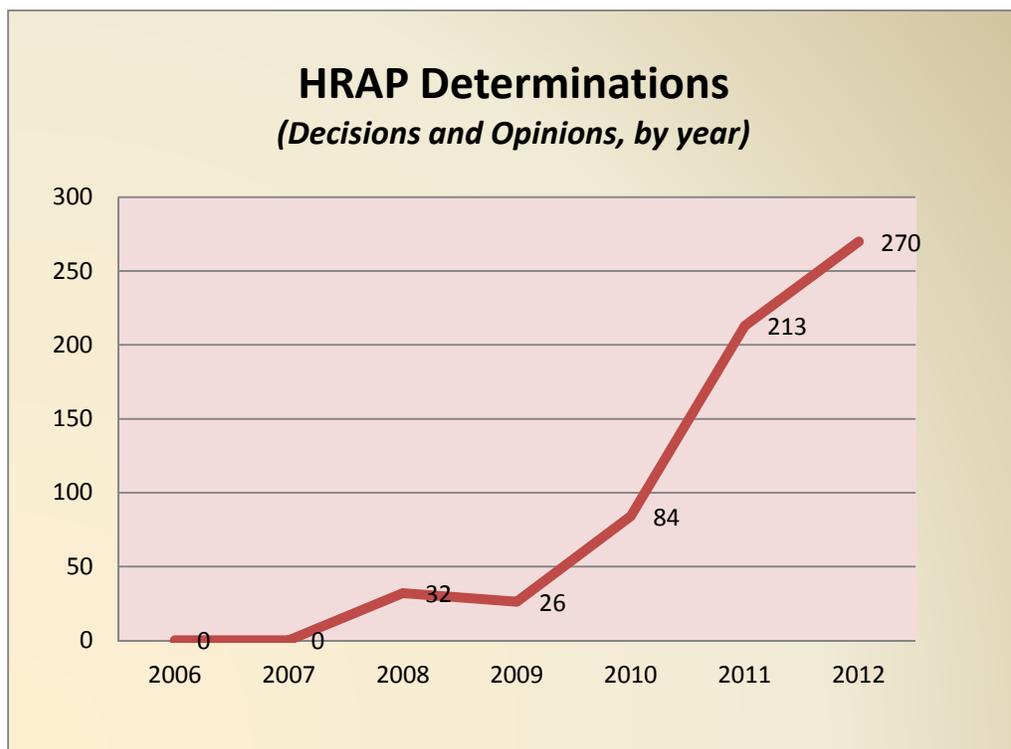
**Opinions - Violation:**

1. *Dragan Prelević*, 11/08 – opinion of 17 February 2012
2. *Jahja Morina*, 36/08 – opinion of 10 May 2012
3. *Olga Lajović*, 09/08 – opinion of 9 June 2012
4. *Dragiša Đurašković*, 41/08 – opinion of 9 June 2012
5. *M. S.*, 122/09 – opinion of 9 June 2012
6. *Radivoje Radisavljević* 157/09 – opinion of 9 June 2012
7. *Olivera Čupić*, 184/09 – opinion of 9 June 2012
8. *Bogoljub Šmigić*, 192/09 – opinion of 9 June 2012
9. *Milijana Vuksanović*, 193/09 – opinion of 9 June 2012
10. *Milan Petrović*, 204/09 – opinion of 9 June 2012
11. *Vinka Popović*, 337/09 – opinion of 9 June 2012
12. *Predrag Mirić*, 347/09 – opinion of 9 June 2012
13. *Zoran Ljušić*, 348/09 – opinion of 9 June 2012
14. *Slobodan Pelišer*, 66/10 – opinion of 9 June 2012
15. *Božidarka Felegi*, 32/08 – opinion of 17 August 2012
16. *Dragan Piljević*, 05/09 – opinion of 17 August 2012
17. *Svetlana Marinković*, 203/09 – opinion of 17 August 2012
18. *Velibor Ađančić*, 310/09 – opinion of 17 August 2012
19. *Gani Thaqi*, 13/08 – opinion of 12 September 2012
20. *S. C.*, 02/09 – opinion of 6 December 2012
21. *Zvonimir Ristić*, 10/08 – opinion of 6 December 2012

**Opinions - No Violation:**

22. *Miroslav Mihajlović*, 15/08 – opinion of 22 August 2012
23. *Desanka Stanišić and Zoran Stanišić*, 34/08 – opinion of 22 August 2012

Annex E:



Annex F:



Annex G:

## **ABBREVIATIONS AND ACRONYMS**

**DOJ** - Department of Justice  
**DPPO** - District Public Prosecutor's Office  
**ECHR** - European Convention on Human Rights  
**ECtHR** - European Court of Human Rights  
**EU** - European Union  
**EULEX** - European Union Rule of Law Mission in Kosovo  
**HPCC** - Housing and Property Claims Commission  
**HPD** - Housing and Property Directorate  
**HRAP** - Human Rights Advisory Panel  
**HRC** - United Nations Human Rights Committee  
**IACtHR** - Inter-American Court of Human Rights  
**ICCPR** - International Covenant on Civil and Political Rights  
**ICMP** - International Commission on Missing Persons  
**ICRC** - International Committee of the Red Cross  
**JSEC** - Joint Security Executive Committee  
**KFOR** - International Security Force (commonly known as Kosovo Force)  
**KPA** - Kosovo Property Agency  
**KPC** - Kosovo Protection Corps  
**KTA** - Kosovo Trust Agency  
**KLA** - Kosovo Liberation Army  
**MMP** - Missing/Murdered Person  
**OMPF** - Office on Missing Persons and Forensics  
**OSCE** - Organization for Security and Cooperation in Europe  
**PAK** - Privatization Agency of Kosovo  
**SOE** - Socially-Owned Enterprise  
**SRS** - Special Representative of the Secretary-General  
**UN** - United Nations  
**UNDP** - United Nations Development Programme  
**UNHCR** - United Nations High Commissioner for Refugees  
**UNMIK** - United Nations Interim Administration Mission in Kosovo