



The Human Rights Advisory Panel

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Annual Report 2014



Foreword

The seventh year of the Human Rights Advisory Panel's activity has already passed. During the year 2014, the Panel issued a large number of opinions in cases with complaints by individuals who claimed violations of international human rights standards by UNMIK during the period of its executive administration. In the vast majority of these cases, the complainants alleged the lack of adequate criminal investigations, in relation to disappearances, abductions and killings, pursuant to the procedural obligations arising under Article 2 of the European Convention on Human Rights (ECHR), and violations of Article 3 of the ECHR with respect to the inhuman and degrading treatment of family members and other close relatives of victims. In its opinions, the Panel expanded and consolidated its already extensive case law in these areas, especially with respect to new specific issues arising in some of these cases.

Additionally, after reviewing more than 100 complaints alleging the lack of adequate criminal investigations in relation to disappearances, abductions and killings, the Panel put on record that UNMIK's failures were systemic in this regard and could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.

The Panel also issued opinions in two discrimination cases, finding that the complainants had been discriminated against in proceedings before the Special Chamber of the Supreme Court of Kosovo due to their minority ethnicity, in violation of Article 14 of the ECHR.

The small, though very professional and committed team from the Panel's Secretariat greatly aided the Panel in the preparation of a large number of quality opinions in 2014.

In general, the Panel's cooperation with UNMIK on pending cases has proceeded as in previous years. A major structural problem remains however, namely that of the implementation of the Panel's opinions, especially in relation to meaningful apologies and financial compensation to the complainants. Just as in preceding reports, it bears repeating that the UN continues to deny any financial compensation to victims in cases where the Panel found that UNMIK committed human rights violations. Nothing has changed in this respect since the Panel's previous annual report.

The hope remains that the EULEX and Kosovo law enforcement institutions will be active and efficient in particular in continuing investigations in cases related to abductions, disappearances and killings in which the Panel found substantial shortcomings, although so far there has been little evidence provided that such is the case.

The year 2014 was also a period of the discussion and reflection within the Panel and Secretariat concerning various issues related to moving towards the completion of its mandate and preparing the final report which will express the legacy of the Panel. The experience gathered since its inception should be considered as constituting an important contribution to the debate on the

mechanisms of international human rights protection, especially in relation to international institutions and organizations and their human rights accountability.

Marek Nowicki

Presiding member

Human Rights Advisory Panel

March 2015

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1. Introduction

1. The Human Rights Advisory Panel (the Panel), established by UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 23 March 2006,¹ continued to examine complaints of alleged human rights violations committed by or attributable to the United Nations Interim Administration Mission in Kosovo (UNMIK) throughout its seventh full year of operation (2007 - 2014) 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, the Panel can 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) concerning compensation or other specific relief.
2. Despite having a staffing shortage in the Secretariat for half of the year, the Panel was able to have a very successful period of processing complaints. Accordingly in 2014, the Panel adopted more substantial opinions than in any previous year. This annual report covers the period from 1 January 2014 to 31 December 2014, during which time the Panel conducted 11 sessions, including having deliberations through electronic means. During this year, the Panel adopted 56 opinions on the merits (concerning 96 complaints), found a further 2 complaints admissible in part, declared 1 complaint inadmissible and rejected 4 requests for revision of former determinations. Out of a total of 527 registered complaints, a few of which involved large numbers of named complainants, as of the end of 2014, a total of 439 complaints are closed, while the remaining 88 complaints are pending at various stages of the proceedings. In addition, the Panel continued its regular work on all pending cases. The Panel expects to conclude its work in 2015.
3. In 2014, the Panel Members met with a delegation from the UN Working Group on Enforced and Involuntary Disappearances. Additionally in 2014, the Panel Members and the Secretariat liaised with the EULEX Human Rights Review Panel and discussed matters of mutual interest.
4. To better hone its expertise on the subject matters within the Panel's purview, lawyers from the Secretariat visited the 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.
5. In 2014, the Panel and Secretariat continued to make extensive usage of other resources to collect information that it was unable to gather from the complainants or from the SRSG's submissions to the Panel. For example, the Panel was provided with invaluable information, including relevant investigative documents that had been heretofore unobtainable, from the State Prosecutor from the Office of the Chief State Prosecutor of Kosovo, the Chief Prosecutor from the Basic Prosecutor's Office in Prizren, UNMIK

¹ Attached as Annex A.

Police and Kosovo Police. The information received was communicated to all the parties to complaints before the Panel.

6. The Secretariat also liaised 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 Kosovo and Metohija, as well as the officers of the programme “Support to the Implementation of Strategies for IDPs, Refugees and Returnees – Legal Aid”, to gather relevant information when required. In addition, the Secretariat regularly relied on the information published in the online databases of the International Committee of the Red Cross (ICRC)² and the International Commission of Missing Persons (ICMP)³, as well as information referenced from the publications of the Humanitarian Law Centre.⁴

2. Composition of the Panel

2.1. Panel Members

7. 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 2014 were Mr Marek Nowicki (Poland), Ms Christine Chinkin (United Kingdom/Australia) and Ms Françoise Tulkens (Belgium)⁵. 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, 2012, 2013 and 2014⁶.
8. Biographical information is provided hereunder on the members of the Panel.
9. **Marek A. Nowicki** (January 2007- present) is a Polish citizen, a human rights lawyer, and a member of the Warsaw Bar Chamber since 1987.
10. 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.
11. 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

² The ICRC list is available at <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx>

³ The ICMP database is available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en

⁴ See: *Abductions and Disappearances of Non-Albanians in Kosovo. 24 March 1999 – 31 December 2000*, p. 12 // HLC webpage [electronic source] - <http://www.hlc-rdc.org/wp-content/uploads/2013/02/KO-Abductions-and-disappearances-of-non-Albanians-in-Kosovo-1.pdf> (accessed on 20 March 2015)

⁵ Ms Tulkens’s appointment and re-appointment by the SRSG covers the same time-period but was effective from 14 September 2012 until 13 September 2013, 14 September 2013 until 13 September 2014 and 14 September 2014 until 13 September 2015.

⁶ See: HRAP Rules of Procedure, Rule 6.

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.

12. 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. 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 the European Convention on Human Rights at the National School for Public Administration in Warsaw. He is a member of the Selection Committee of the Václav Havel Human Rights Prize of the Parliamentary Assembly of the Council of Europe.
13. **Christine Chinkin** (February 2010- present) a dual British/Australian citizen, Fellow of the British Academy, is Emeritus Professor of International Law at the London School of Economics and Director of the newly created Centre on Women, Peace and Security at the LSE. She is also a William C. Cook Global Law Professor at the University of Michigan Law School. She is a member of the Bar of England and Wales and an academic member of Matrix Chambers. She has degrees in law from the Universities of London, Yale and Sydney and has previously held full-time academic posts at the Universities of Oxford, London, Sydney and Southampton, New York Law School and the National University of Singapore.
14. Ms Chinkin's main interests are in public international law, especially the law of treaties, human rights, with emphasis on the international protection of women's rights, and international organisations, and domestic and international dispute resolution. She is the author of many articles on issues of public international law and women's human rights, of Halsbury's Laws of Australia, Title on Foreign Relations (2nd edition 2001), Third Parties in International Law (1993), co-author of Dispute Resolution in Australia (2nd edition 2002), co-author of The Boundaries of International Law: A Feminist Analysis (2000), co-author of The Making of International Law (2007), co-editor of the United Nations Convention on the Elimination of all Forms of Discrimination against Women (2012) and Sovereignty, Statehood and State responsibility (2015). From 2004-2012, she was Director of Studies of the International Law Association. She is a member of the IBA Human Rights Institute. In April 2001 she was awarded the American Society of International Law's Certificate of Merit for 'outstanding contribution to scholarship' and in 2006 the Society's Goler T. Butcher Medal 'for outstanding contributions to the development or effective realization of international human rights law' (with H. Charlesworth).
15. Ms Chinkin has been a consultant on international law to the Asian Development Bank; on trafficking in women to the UN Office of the High Commissioner 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 Preventing and Combating 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.

16. **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.
17. 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.
18. 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.
19. 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* (9th edn., 2010) and *Droit de la Jeunesse : Aide, Assistance et Protection* (2000). She also co-edits: *Code de droit international humanitaire* (6th edn., 2013), *International Humanitarian Law Code* (1st edn., 2013) and *Code de droit international des droits de l'homme* (5th edn., 2014). 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 of International Criminal Justice* and the *Inter-American and European Human Rights Journal*.
20. In 2013 she has been appointed as a member of the Scientific Committee of the Fundamental Rights' Agency (FRA) of the European Union. She is 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.
21. She holds honorary doctorates from the Universities of Geneva, Limoges, Ottawa and Ghent. She has been an Associate Member of the Belgian Royal Academy of Sciences, Literature and Fine Arts since 2011.
22. Ms Tulkens is currently Chair of the Board of Governors of the King Baudouin Foundation.

2.2. 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 Services 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 Police 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. Mr Antonov holds a PhD in Law, specializing in Criminal Procedure, Criminal Investigation and Crime Detection from the Volgograd Law Academy of the Russian MIA and an LLM in Law from the same institution. He has also 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 as a legal officer in May 2011. Previously, Ms Cesano worked as a rule of law officer at the Access to Justice Programme of the United Nations Development Programme in Sierra Leone (2010-2011), as a liaison officer at the United Nations High Commissioner for Refugees in Tanzania (2009) and as a human rights officer at the United Nations Integrated Office in Sierra Leone (2007-2009). Before joining the United Nations, Ms Cesano worked at the University of Siena, Italy (2006-2007) as a researcher on the European system for the protection of human rights. Ms Cesano first worked in the Balkans in 2005 with the Organization for Security and Cooperation in Europe, Serbia and Montenegro. She holds a Masters Degree in Human Rights and Conflict Management from the Sant' Anna School of Advanced Studies of Pisa and a Master of Laws degree from the Catholic University of Milan, Italy.
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. **R. Dule Vicovac**, a Canadian citizen and member of the Manitoba Bar in Canada and Minnesota Bar in the United States, joined the Secretariat as a legal officer in August 2014. Previously Mr Vicovac worked as an attorney in criminal and refugee cases in Canada (2013-2014) after spending over 12 years in the former Yugoslavia. He also worked as a legal expert in an EU-funded legal aid project assisting displaced persons from Kosovo

(2011-2012), as a Team Leader/Legal Expert in an EU-funded project with the Ministry for Human & Minority Rights of Serbia (2010-2011) and as a Legal Expert with the Danish Refugee Council assisting displaced persons in the former Yugoslavia (2008-2009). Prior to that Mr Vicovac served as a legal officer with UNMIK's Department of Justice as the Acting Registrar of the International Judicial Support Division (2007- 2008) and as an Associate Legal Officer of the Judicial Integration Section, (2002-2007). Mr Vicovac served as Head of Region, Peja/Pec, Prizren & Montenegro, Housing and Property Directorate, UN-Habitat (2002) and Field Coordinator, Housing and Property Directorate, UN-Habitat (2000-2001). Mr Vicovac holds a Juris Doctorate from Hamline School of Law in Minnesota and also attended the University of Manitoba and Oxford University. He holds a Bachelor of Arts in Justice and Law from the University of Winnipeg. His article titled, "*Challenges in Providing Legal Aid to Persons Displaced Following an Armed Conflict, Lessons Learned from Kosovo*" was published by the Oxford Journal for Human Rights Practice.

28. **Snežana Martinović**, a national staff member and legal assistant, has been working 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.
29. **Adlije Muzaqi**, a national staff member and team assistant, has been working 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 Vushtrri/Vučitrn Municipality, Mitrovicë/Mitrovica Region.

3. Media and NGO Coverage of HRAP

30. In 2014, there was significant media coverage of the Panel's opinions on the complaints related to missing and murdered persons (MMP), as the fate of such persons continues to be an area of concern throughout the region. Both *Vesti*, a news organization which disseminates its reporting throughout the Serbian speaking world in print and electronically via its website *Vesti online*, and *Zëri*, a news organization widely disseminated throughout the Albanian speaking world, published stories concerning the Panel's MMP opinions. As a typical example, on 9 August 2014, *Vesti* published a story about an HRAP opinion in one of its MMP cases and the lack of criminal investigation and prosecution by UNMIK and EULEX of his alleged abductors, despite one of them allegedly confessing to the deed⁷.
31. In 2014, Amnesty International (AI) continued its correspondence with the SRSG concerning the Panel's MMP opinions. On 6 February 2014, AI sent a letter to the SRSG in which it reiterated its concerns from its letter to the SRSG of August 2013 and subsequent Report entitled "*UNMIK Legacy: the failure to deliver justice and reparations to the relatives of the abducted*"⁸ and requested that UNMIK provide further information about

⁷ *Vesti online*, 9 August 2014, "Otmičari priznali, Unmik i Euleks nemaju dokaza" ("*Kidnappers confess, UNMIK and EULEX have no evidence*").

⁸ For a further discussion of this Amnesty International letter and the Panel's reactions to it, please see the 2013 HRAP Annual Report, §§ 36, 97-104.

how it was addressing those concerns. UNMIK's reaction to the AI letter received significant international press and media coverage⁹.

32. On 30 August 2014, AI published a statement entitled "*Serbia/Kosovo: Time to fulfil the right to truth, justice and reparation for victims of enforced disappearances and abductions*" in which AI again noted that UNMIK "has refused to provide reparation to the families of the missing for failing to conduct effective investigations, as recommended by UNMIK's own Human Rights Advisory Panel." AI concluded by stating that it "calls on all parties to the conflict to take every measure to bring the perpetrators to justice, and ensure that the relatives of all missing persons are guaranteed reparation, including compensation for the pain and suffering caused by the loss of their family member."

4. Caseload of the Panel

4.1. Statistics

33. 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.
34. During the reporting period, the Panel adopted 56 opinions on the merits (concerning 96 complaints), found a further 2 complaints admissible in part, declared 1 complaint inadmissible and rejected 4 requests for revision of former decisions or opinions.
35. At the end of 2014, there were no cases pending before the Panel at the admissibility stage, and 88 cases awaiting an opinion on the merits. The Panel closed 97 cases in 2014¹⁰.

4.2. Selected Opinions of the Panel by Subject Matter

36. Below are a select number of opinions issued in 2014, listed according to the subject matter, which are highlighted for further discussion in section 6 of this report:

Right to Life – Right to an Effective Investigation

- *Tatjana Vitošević and Others*, 139/09 and others (opinion of 23 January 2014)
- *Goran Knežević*, 141/09 (opinion of 25 February 2014)
- *Srboljub Mitić*, 63/09 (opinion of 14 March 2014)
- *R.P.*, 120/09 & 121/09 (opinion of 14 April 2014)
- *Biljana Radovanović*, 154/09 & 155/09 (opinion of 29 May 2014)
- *L.V. and Others*, 291/09 and others (opinion of 26 June 2014)
- *Milica Mladenović*, 99/09 (opinion of 26 June 2014)
- *Muharrem Ibraj*, 14/09 and others (opinion of 6 August 2014)

⁹ *Vesti online*, 26 February 2014, "Porodicama nestalih ni obeštećenja, ni izvinjenja" ("*No compensation or apology to families of missing persons*"); *Vesti online*, 23 March 2014, "Kosovo, zemlja nestalih i ubijenih - Umesto pravde stiglo Unmikovo pismo" ("*Kosovo, a country of the missing and murdered: Instead of Justice, a letter from UNMIK*"); *Politika online*, 3 March 2014, "Unmik ne omogućava pravdu žrtvama na Kosovu" ("*UNMIK does not allow justice for the victims in Kosovo*").

¹⁰ For detailed statistics, see Annex C.

- *Dobrila Antić-Živković*, (opinion of 16 October 2014)
- *Cica Janković*, 249/09 (opinion of 16 October 2014)
- *Slađana Remištar*, 245/09 (opinion of 17 October 2014)
- *Vuksan Bulatović*, 166/09 (opinion of 13 November 2014)
- *Ljliana Mitrović and Others*, 144/09 and others (opinion of 14 November 2014)
- *Lela Nikolić and Others*, 72/09 and Others (opinion of 14 December 2014)
- *Marija Stevanović*, 289/09 (opinion of 14 December 2014)

Right to Be Free From Discrimination- Right to a Fair Hearing

- *Fillim Guga*, 47/08 (opinion of 24 January 2014)
- *Nevenka Ristić*, 319/09 (opinion of 30 May 2014)

5. Cases Outstanding as of 31 December 2014

37. The Panel has been continuing to work on key cases for which it expects to issue opinions in 2015. For example, the case *Mon Balaj and Others*, involving allegations of violations of the right to life (Article 2 of the ECHR) and the right to peaceful assembly (Article 11 of the ECHR) is close to completion¹¹. In *Mon Balaj and Others*, the complainants allege that UNMIK Police used excessive force during a crowd control operation in Kosovo on 10 February 2007, resulting in the deaths of two victims and the serious bodily injury of two other victims.
38. Another case still outstanding is that of *N.M. and Others*, concerning allegations of violations of the right to life, (Article 2 of the ECHR) prohibition of inhuman or degrading treatment (Article 3 of the ECHR) and the right to respect for private and family life (Article 8 of the ECHR), among others. In *N.M. and Others*, the complainants, who are 143 members of the Roma, Ashkali and Egyptian communities in Kosovo, claim to have suffered lead poisoning and other health problems on account of the soil contamination in the camp sites they were placed in by UNMIK due to the proximity of the camps to the Trepça/Trepča smelter and mining complex and/or on account of the generally poor hygiene and living conditions in the camps.
39. A third key outstanding case is *Employees of the Kišnica and Novo Brdo Mines of Trepča Complex*, concerning allegations of violations of the right to the peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the ECHR), the right to work (Article 6 of the International Covenant on Economic Social and Cultural Rights [ICESCR]), the right of access to court (Article 6 of the ECHR), the right to an effective remedy (Article 13 of the ECHR), the right to be free from discrimination (Article 14 of the ECHR), and general prohibition of discrimination (Article 2, in conjunction with Articles 6, 9 and 11 of the ICESCR), the right to social security (Article 9 of the ICESCR) and the right to an adequate standard of living (Article 11 of the ICESCR). In this case, the complainants, non-Albanian employees of the *Trepča* mine complex, complain that in June 1999, British KFOR soldiers forcefully removed them from the *Trepča* mine complex. Thereafter,

¹¹ The opinion in the *Balaj et al* was adopted on 27 February 2015. See the Panel's Press release: http://www.unmikonline.org/hrap/Documents%20HRAP/Press%20Releases%20Eng/04_07_Balaj_Press_Release%20_2mar15.pdf

although they retained the status of employees with the enterprise, since June 1999 they have neither been paid any wages nor placed by UNMIK in an alternative scheme of sustainable financial support.

40. Another key case is *Tomë Krasniqi*, concerning allegations of violations of the right to the peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the ECHR), the prohibition of inhuman or degrading treatment (Article 3 of the ECHR), the right to a social security (Article 9 of the ICESCR) and the right to an adequate standard of living (Article 11 of the ICESCR). In *Tomë Krasniqi*, the complainant alleges that his rights were violated because of UNMIK's inaction with regard to his inability to receive his Serbian pension.

6. Jurisprudence of the Panel

41. In 2014, the Panel continued to make significant progress in addressing its caseload. In closing 97 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 2014 are described in more detail below.

6.1. Issues on the Merits

6.1.1. Right to Life – Right to an Effective Investigation – Article 2 of the ECHR

Lack of Effective Investigation-No Record of Substantive Action Taken by UNMIK

42. In the case *Ibraj*, the complainant complained that six of his close family members were abducted between 19 and 22 June 1999 from their homes in Osek Hilë/Osek Hile village, Gjakovë/Đakovica municipality and five were killed some time thereafter (the other was disappeared) without UNMIK effectively investigating the crimes. In reviewing the investigative file, the Panel noted that “unlike many other reports of disappearances that took place during the summer of 1999, it was clear in this case from the very beginning that the complainant's close relatives had been taken away by the KLA, and had never been seen alive again. Thus, there were grounds to believe that these persons had in fact disappeared in obviously life-threatening circumstances. Nevertheless, UNMIK authorities never undertook any substantive action to investigate these abductions, either immediately, or at a later time. Although the minimum necessary information about the complainant and other family members was available in the file, their statements had never been recorded and no action in relation to the alleged perpetrators identified by the family members was taken. The police did not even visit the village from where the victims were taken, in order to gain a better understanding of the circumstances of the disappearance, or to try to find any other witnesses to the abductions. Likewise, the file reflects no attempts by the Police to verify the possible connection of the suspects named by the victims' family members to the abductions.” The Panel found that UNMIK had failed to carry out an effective investigation into the abduction and killing (or, in one case, abduction and disappearance) of the complainant's family members and that “[t]here has accordingly been a violation of Article 2, procedural limb, of the ECHR.” See HRAP, *Ibraj*, cases nos. 14/09 *et al.*, opinion of 6 August 2014, §§ 144, 162.

Relationship between UNMIK's Investigation and ICTY Investigation

43. In the case *Remištar*, the complaint concerned the lack of an UNMIK investigation into the abduction and probable killing of Mr Nenad Remištar, who was the subject of a concurrent International Criminal Tribunal for the former Yugoslavia (ICTY) investigation in its case no. IT-04-84, *Haradinaj et al.* The Panel noted “it does not dispute the ICTY’s overall primacy jurisdiction to investigate any crime within its jurisdiction committed in the territory of the former Yugoslavia, due to its recognised international status under the UN Security Council’s Resolution 827 (1993). However, the Panel considers that the aspect that still needs to be examined from the perspective of the procedural obligation under Article 2 of the ECHR is whether any obligation under this Article, besides cooperation and provision of assistance to the ICTY, remained with UNMIK during the period of the Panel’s jurisdiction.” The Panel noted that the ICTY continued to hold jurisdiction over the matter “until 29 November 2012, the date when the ICTY Trial Panel delivered its judgment after the re-trial in the case *Haradinaj et al.*,” at which point, because the perpetrators had not been located, in accordance with the continuous obligation to investigate, the competence to do so had been formally transferred to EULEX, which on 9 December 2008 assumed full operational control in the area of the rule of law in Kosovo. The Panel noted that “[t]hen it would be for the EULEX authorities to use the means at their disposal to review the investigation to ensure that nothing had been overlooked, as well as to inform relatives regarding the progress of this investigation. However, the action of authorities, other than UNMIK, after December 2008 does fall outside the Panel’s jurisdiction.” Thus, the Panel concluded that “as far as this investigation is attributable to the UNMIK authorities, there has been no violation of Article 2, procedural limb, of the ECHR.” See HRAP, *Remištar*, case no. 245/09, opinion of 17 October 2014, §§ 104-120.
44. Similarly, in the case *Mitrović and Others*, the complaint concerned the lack of an UNMIK investigation into the abduction and disappearance of Mr Slobodan Mitrović and other victims, who were the subject of a concurrent ICTY investigation in its case no. IT-03-66-A, *Limaj et al.* The Panel noted that the ICTY continued to hold jurisdiction over the matter “until 27 September 2007 the date when the ICTY Appeals Chamber delivered its judgment in the case *Limaj et al.*” The Panel noted that, although that judgment ended the ICTY case, “considering the fact that neither the mortal remains of the victims have been located nor those responsible for their abduction and disappearance have been brought to justice... the procedural obligation under Article 2 of the ECHR was not discharged and [the investigation] should have been continued, although a long time had passed from the alleged crimes.” Therefore, the Panel noted, “in accordance with the continuous obligation to investigate, the competence to do so had been formally transferred back to UNMIK.” However, the Panel considered that “the one-year period from September 2007 (deemed as the end of the ICTY’s jurisdiction over these investigations) until December 2008 (the end of UNMIK’s executive authority in Kosovo), is an insufficient period for any assessment of an adequacy of the investigation by UNMIK. Therefore, the Panel has no grounds for finding a violation of Article 2 of the ECHR on the part of UNMIK.” See HRAP, *Mitrović and Others*, cases nos. 144/09 and *Others*, opinion of 13 November 2014, §§ 201-213.

Lack of Effective Investigation into a Mass Disappearance and Killings

45. In the case *Mitić and Others*, the complaint alleged that UNMIK failed to effectively investigate the disappearance of Mrs Jovanka Mitić and four other family members who were disappeared along with 15 other Serbs during a KLA attack on their village in June 1999. The Panel noted that “in the context of most serious crimes committed against civilian populations, Article 2 requires that the authorities take all investigative efforts in order to establish the facts and bring perpetrators to justice. Such cases shall be given the highest priority.” The Panel also stated that “no effort was made by the investigative authorities to investigate in a systematic and coordinated manner the disappearance of about 20 persons from Mushtisht/Mušutište village in June 1999 during a concerted KLA action which appears to the Panel to be an operation of ethnic cleansing.” As such, the Panel found that “having considered the gravity and dimension of the crimes committed as well as the harm suffered by the victims and their families in cases like the present one, the Panel concludes that UNMIK failed to carry out an effective investigation into the killing of [the victims]. There has been accordingly a violation of Article 2, procedural limb, of the ECHR.” See HRAP, *Mitić and Others* cases nos. 63/09 and others, opinion of 14 March 2014, §§ 150,172, 178.

Lack of Follow Up on a Possible KLA Detention Centre

46. In the case *R.D.*, the complainant complained that her husband and son were disappeared in July 1999 and killed some time thereafter without UNMIK effectively investigating the crimes. The Panel noted that the investigative file had shown that in April 2000 UNMIK Police had received an intelligence report according to which the complainant’s son, Mr R.P., was being illegally detained in a KLA detention centre in Skenderaj/Srbica. The Panel noted with concern that “there is no documentation in the file showing that the UNMIK Police took any action to verify or follow-up on this information, not only with respect to the case of Mr R.P. but also with respect to a wider investigation involving a possible pattern of abductions and illegal detentions by the KLA throughout Kosovo.” See HRAP, *R.D.*, cases nos. 120/09 & 121/09, opinion of 14 April 2014, § 92.

47. In the case *L.V. and Others*, the complainants complained that their family members were abducted in the area of Lipjan on 22 June 1999 and killed or probably killed some time thereafter without UNMIK effectively investigating the crimes. In reviewing the investigative file, the Panel noted that “it is apparent...that in April 2000 UNMIK Police had received an intelligence report according to which the complainants’ family members, M.V., M.Đ. and D.S., had been abducted by a named person and were being at that time illegally detained in a KLA prison in ‘Racak-Stimlje’ municipality...The Panel notes with concern that it is not clear from the investigative file which actions, if any, were taken by the UNMIK Police to verify or follow-up on this information, not only with respect to the case of M.V., M.Đ. and D.S., but also with respect to a wider investigation involving a possible pattern of abductions and illegal detentions by the KLA throughout Kosovo and northern Albania.” See HRAP, *L.V. and Others*, cases nos. 147/09, opinion of 26 June 2014, § 122.

48. In another similar case *Antić-Živković*, the complainant complained that her son was abducted by KLA members on 28 July 1999 and since that time, his whereabouts are

unknown, without UNMIK effectively investigating his abduction. In reviewing the file and other material concerning the case, the Panel noted that “the name of Mr Zlatko Antić is mentioned in a document dating back to October 2003 prepared by the UNMIK DoJ for the ICTY, summarising information about a suspected ring of trafficking in human beings by the KLA between Kosovo and Albania for the purposes of forced prostitution and organ harvesting. Although not included in the documents provided by the SRSG with respect to the case of Mr Zlatko Antić, this document has already been made publicly available and has been presented by the SRSG as part of the investigative files concerning other cases before the Panel. According to this document, Mr Zlatko Antić was in a group of ‘captives’ taken to Albania and kept in a detention facility in Northern Albania in July or early August 1999 for the purpose of organ trafficking.” The Panel also noted that “at the latest by October 2003, the UNMIK DoJ had received information from eye-witnesses, all former KLA members, that Mr Zlatko Antić was probably among those captives who had been taken to illegal detention centres in Albania, reportedly for the purpose of having their organs harvested. However, there is no indication in the file that this important piece of information was provided to those investigating the case of Mr Zlatko Antić or that any action was taken by UNMIK to further investigate these most serious allegations apart from transmitting the information to the ICTY in 2003. As noted in other similar cases, the Panel is extremely concerned that so little effort was made to investigate and give effect to the right to truth with respect to these shocking allegations.” See HRAP, *Antić-Živković*, case no. 147/09, opinion of 16 October 2014, §§ 37, 93.

Lack of Effective Investigation into the Disappearance of a Journalist

49. In the case *Janković*, the Panel found that UNMIK failed to carry out an effective investigation into the disappearance of Mr Marjan Melonaši, a journalist of the Serbian Language Editorial Service of the Radio and Television of Kosovo (RTK) who was disappeared in Kosovo on 6 September 2000. The Panel highlighted that, notwithstanding the SRSG’s argument that UNMIK “continued to place primary emphasis on combating politically motivated violence”, in its view, “the disappearance of a known journalist working for a Serbian media service of the RTK in broad day light in the middle of the capital city might have likely been connected to that ‘politically-motivated violence’”. Nevertheless, UNMIK authorities never undertook any substantive action to investigate his disappearance, either immediately, or at a later time. Although the minimum necessary information about the complainant and other potential witnesses was available in the file, their statements had never been recorded. The police did not even visit the home or the workplace of Mr Melonaši, in order to at least gain a better understanding of the circumstances of the disappearance.” See HRAP, *Janković*, case no. 249/09, opinion of 16 October 2014, §§ 49, 102.

Systemic Failures with UNMIK Investigations

50. In the case *Bulatović*, the Panel went beyond the particular failure of UNMIK to effectively investigate the abduction and disappearance of the victim to note UNMIK’s systemic failures regarding the cases of missing and/or murdered persons. “The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the

conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel’s jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight and failure to provide family members with minimum necessary information on the status of the investigation... The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK’s failures, which persisted throughout the period of the Panel’s jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.” The Panel also noted that “[f]or its part, the Panel, in light of the shortcomings and deficiencies in the investigation described above, considers that the case of Mr Radovan Bulatović, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo.” See HRAP, *Bulatović*, case no. 166/09, opinion of 13 November 2014, §§ 85, 101.

Responsibility of UNMIK to Reach Out to Displaced Witnesses During Investigations

51. In the case *Nikolić and Others*, the complainants alleged that UNMIK had not effectively investigated the abduction and disappearance of their close relatives and they had become displaced persons in Serbia proper, having left Kosovo after June 1999 for security reasons. The Panel noted that “[i]t is particularly important in the light of the fact that the complainants’ contact details, in Serbia proper... were available to UNMIK Police from the very beginning. In this respect, the Panel recalls the general need to take into account the special vulnerability of displaced persons in post-conflict situations. Thus, in the Panel’s view, it was for UNMIK to reach out to them, and not for them to come back to Kosovo, from where they had left for security reasons, to try to find out what had happened to their relatives or to the investigation.” See HRAP, *Nikolić and Others*, cases nos. 72/09 and *Others*, opinion of 14 December 2014, § 198.

UNMIK DoJ and UNMIK Police Improperly Prioritising Cases

52. In the case *Stevanović*, the complainant complained that her son was abducted by unknown persons on 19 August 1999 while travelling in a vehicle from Fushë Kosovë/Kosovo Polje to Podujevë/Podujevo and since that time, his whereabouts are unknown, without UNMIK effectively investigating his abduction. In reviewing the file and other material concerning the case, the Panel paid “particular attention to [a document in the file] giving information about a meeting that took place in November 2003, at which it was generally determined that ‘due to time, resource and personnel limitations, only certain cases would continue to be investigated and only those cases with a strong likelihood of suspect identification would be kept open.’ This particular case was considered as not meeting ‘the level of either proof, evidence, or suspect identification to remain open’ and subsequently, upon an order of the Director of the UNMIK DOJ, was closed. Although this meeting occurred outside the Panel’s temporal jurisdiction, its particular effects continue within that period.

Therefore, the Panel considers it necessary to comment on it. Although recognising the problem raised at the meeting, the Panel is seriously concerned by such a simplistic approach towards its resolution, interrupting investigation of the alleged grave crime.” The Panel also reiterated “its position expressed in other cases in relation to the adequacy of the investigation into the abductions, disappearances, killings and suspicious deaths that no prioritisation should be made at the earliest stages, before any basic investigative steps towards collection of additional information is taken and all obtainable evidence had been collected.” See HRAP, *Stevanović*, case no. 289/09, opinion of 14 December 2014, §§ 112-114.

Prompt Investigation by UNMIK Police - Subsequent Failures at the Judicial Phase

53. In the case *Mladenović*, where the complainant complained that her son was abducted by a group of armed Albanians from his friend’s family house in the village of Gojbulë/Gojbulja, Vushtri/Vučitrn Municipality on 25 June 1999 and since that time, his whereabouts are unknown, without UNMIK effectively investigating his abduction and disappearance. After reviewing the investigative file, the Panel noted with concern “that the file contains neither a decision of a responsible prosecutor to discontinue the investigation following the failure to indict [a named suspect], as required under Article 174 of the Yugoslav Law on Criminal Proceedings (LCP), or an indication that the complainant, her family, or the family of the other two missing persons, were made aware of that decision. In accordance with Article 60 of the LCP, such a notification would have enabled them to continue with a subsidiary prosecution, should they have wished to do so.”
54. The Panel also noted that “the position of the European Court with regard to the nature of the procedural obligation under Article 2, which is ‘not an obligation of results but of means.’ The Court clearly states that no violation of Article 2 exists if the authorities take all reasonable steps they can to secure the evidence concerning an incident and the investigation’s conclusion is based on thorough, objective and impartial analysis of all relevant elements, even when no perpetrators are convicted. In order to satisfy this requirement, after a decision was made not to indict [the named suspect], in 2002, the investigation should have sought to either strengthen the evidence against him, or to find the real perpetrators. However, the file has no indication whatsoever as to any subsequent substantive investigative action taken by the police. Likewise, no action seems to have been taken by international prosecutors with regard to the complainant’s criminal report, which was received and translated by UNMIK in February 2005.”
55. The Panel also felt compelled to remark upon the fact that “the two survivors... who had previously given their statements to the police and the Investigative Judge and had positively identified [the named suspect] on photo line-ups as one of the perpetrators, were during the court proceedings obliged to participate in an identification parade, facing [the named suspect] in person. During the latter action, only one of the survivors identified him, at the second attempt. The Panel is concerned that such a practice, when the survivors have to face the person who had tried forcibly to abduct them, is highly likely to add to the psychological trauma they had already sustained. Although such action might be justified in order uphold the principle of fairness of the proceedings, it must be conducted with extreme caution. This is especially the case in situations where the witnesses or victims

might be under pressure to change their statements. The Panel is also aware of a frequently reported problem in Kosovo related to the lack of protection of witnesses from threats or intimidation, ‘which has been, and remains, one of the greatest challenges for justice authorities’. Some observers note that the ‘[w]itnesses, who in many cases are crucial to linking defendants to the crimes for which they are accused, are becoming more reluctant to testify before institutions, be it police, prosecutors and/or judges in courts’. In this particular case, an anonymous witness had been threatened on the phone the night before the scheduled court appearance, and subsequently refused to testify.”

56. Noting these issues, among others, the Panel remarked that “unlike in many other similar cases before the Panel, in this one the police actively searched for information and leads, although with a delay, and actually found them”; nevertheless, “UNMIK failed to carry out an effective investigation into the abduction and disappearance of the victim,” as required by Article 2, procedural limb, of the ECHR. See HRAP, *Mladenović*, case no. 99/09, opinion of 26 June 2014, §§ 186-190, 200.

6.1.2. Non-Discrimination – Article 14 of the ECHR read in conjunction with Article 6 of the ECHR

Discrimination Against Members of Minority Communities

57. In two discrimination cases before the Panel, complainants submitted complaints alleging that in proceedings before the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (the Special Chamber), they had been discriminated against due to their minority ethnicity. In both cases, the Panel clearly stated that it was not within its jurisdiction to act as a fourth instance tribunal, overseeing the judgments of the Special Chamber. The Panel stated unequivocally that “is not within its jurisdiction to replace its own assessment of the facts for that of the national judicial authorities, in the present case of the Special Chamber. The Panel refers to its own jurisprudence and to the jurisprudence of the European Court of Human Rights that, as a general rule, it is for the competent courts to assess the evidence before them, establish the facts and interpret domestic laws. The Panel will, in principle, not interfere with such an assessment unless the decisions reached by the competent courts appear arbitrary or manifestly unreasonable. The Panel's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was assessed, were fair.”
58. In the first case, *Guga*, the complainant alleged that he was unduly excluded from the employees’ list during the privatisation of his former employer, the company IMN and subsequently, during the KTA (Kosovo Trust Agency) and Special Chamber proceedings, he had been discriminated against due to his Egyptian ethnicity. Specifically, the complainant had claimed that his right to be free from discrimination was violated because in other instances the Special Chamber had decided in favour of claimants, Serbs and members of other minorities, who, like the complainant, had had their labour relations terminated because they left Kosovo in 1999-2000 due to the security situation. The complainant had stated that in those cases, the Special Chamber had accepted their claims to be included in the list of eligible employees and that it had so decided even when they (unlike himself) had not initiated any court proceedings. The complainant also expressly

stated that the Special Chamber had not clarified the reasons for his complaint being adjudicated differently. He claimed that he had been discriminated due to his Egyptian ethnicity.

59. The Panel reviewed the complainant's submissions to the KTA and the Special Chamber, specifically regarding complainant's claim that he did establish facts before the Special Chamber to make a *prima facie* case of discrimination, as required by the relevant laws in Kosovo for employees challenging their exclusions from the employees' list during the privatisation of an employer. The Panel noted that, "in support of his allegation the complainant submitted facts as well as documentary evidence to the KTA and the Special Chamber that – he had worked at IMN for approximately 20 years until March-June 1999; that, when hostilities broke out in Kosovo in 1999, fearing persecution due to his Egyptian ethnicity, he fled as a refugee to Montenegro and thus could no longer work for the enterprise; that, for this reason his employment with IMN was terminated; that, after a certain time, he had attempted to resume working at IMN, without success." Next, the Panel noted that the Special Chamber rejected his claim but "notwithstanding the weight of the complainant's submissions, the Special Chamber judgment did not specify the reasons why the facts indicated by the complainants were considered insufficient to make a *prima facie* case of discrimination or how the evidence presented by the complainant had been evaluated."
60. The Panel went on to evaluate "the different stand adopted by the Special Chamber in other privatisation cases, from June 2004 onwards, with respect to the claim of former employees that they would have been eligible for inclusion in the list had they not been subject to discrimination." The Panel noted two other cases where the Special Chamber's reasoning diverged significantly on this issue and where it eventually recognised the right of Serbian employees to a share of the proceeds. Next the Panel noted that the European Court "held that the existence of divergences, even within the same court cannot be considered of itself contrary to the Convention; nevertheless, there may be cases where divergences in case-law lead to finding a violation of Article 6 [of the ECHR]." The Panel found that in this case "the Special Chamber did not provide a satisfactory explanation as to why his case had been decided differently to the case of other members of national minorities in his same factual situation."
61. The Panel also noted "the situation of vulnerability in which displaced minorities found themselves in Kosovo in the aftermath of the conflict, and in particular, the further vulnerability of those individuals, like the complainant, belonging to the non-Serbian minorities. In accordance with the Panel's earlier expressed view in *Parlić*, their situation required the adoption of positive protection measures by the authorities to give special consideration to ensure their fundamental rights, including within the process of privatisation of the Kosovo socially-owned enterprises." The Panel concluded that "the Special Chamber applied those provisions in the present case without taking into consideration the particular situation of the complainant as a member of an ethnic minority, whose persecution in the aftermath of the conflict was a matter of common knowledge." As such, as "the complainant has presented to it sufficient facts to establish that the Special Chamber treated him differently from others in an analogous situation... The Panel therefore concludes that there has been a violation of Article 14 [of the ECHR], taken in

conjunction with Article 6 of the ECHR.” See HRAP, *Guga*, case no. 47/08, opinion of 24 January 2014, §§ 68-81, 86-87.

62. In the second case, *Ristić*, the complainant similarly claimed that she was unfairly excluded by the Special Chamber from the list of employees eligible to receive a share of the proceeds of the privatisation of the enterprise she had worked for. In particular, the complainant stated that the Special Chamber disregarded the documentary evidence, namely a certified copy of her workbook, proving her employment with the company since 1975, as well as her submission that she had been discriminated against due to her Serbian ethnicity. The Panel reviewed her submissions to the KTA and the Special Chamber and noted that “in support of her allegation, the complainant submitted facts as well as documentary evidence to the KTA and the Special Chamber that she had worked at the enterprise for approximately 24 years until March 1999; that, when hostilities broke out in Kosovo in 1999, fearing persecution due to her ethnicity, she fled as a displaced person to Montenegro and thus could no longer work for the enterprise. The Panel notes that the complainant also made a submission to the Special Chamber that the claim filed against her inclusion in the list was ethnically motivated.”
63. The Panel then noted that “[n]evertheless, the Special Chamber failed to give effect to [the relevant provision] of the Anti-Discrimination Law; it asserted that the complainant ‘did not prove that she was discriminated’ and thus did not require the employees challenging her inclusion in the list to rebut the complainant’s allegations of discrimination. Nor did the Special Chamber give any reason for this. Therefore, the Panel considers that the Special Chamber acted in a discriminatory fashion through its failure to take into account the discrimination experienced by the complainant and through its failure to reverse the burden of proof as required by [the relevant provision] of the Anti-Discrimination Law... The Panel therefore concludes that there has been a violation of Article 14 [of the ECHR], taken in conjunction with Article 6 of the ECHR.” See HRAP, *Ristić*, case no. 319/09, opinion of 30 May 2014, §§ 53, 73-78.

7. Recommendations of the Panel

64. In 2014, the Panel adopted opinions on the merits in 88 cases where it found violations of human rights for which UNMIK was responsible and opinions on the merits in 8 cases where it found no violation of human rights. In each of these cases where violations were found, the Panel considered some form of reparation to be necessary. This year, as in past years, the Panel found it somewhat problematic to determine 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.
65. In 157 of 168 MMP cases considered since the Panel’s inception, it 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 disappearance or abduction and/or killing of the complainants' close relatives. In these cases, the Panel took a wider view of reparations and recommended that UNMIK obtains assurances from EULEX that the investigations would be continued in compliance with the requirements of Article 2, that the circumstances surrounding the disappearance and killing of the victims be established and perpetrators brought to justice; that the complainant and/or other next-of-kin should be informed of such proceedings and relevant documents disclosed to them, as necessary. In addition, the Panel recommended that UNMIK publicly acknowledges, within a reasonable time, including through media, responsibility with respect to its failure to adequately investigate the disappearance and killing of the victims and make a public apology to the complainants and their families in this regard. The Panel also recommended that UNMIK pays adequate compensation to the complainant for the moral damage suffered due to UNMIK's failure to conduct an effective investigation.

66. Additionally, the Panel 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.
67. In 108 MMP cases considered since the Panel's inception, it also found that UNMIK had committed a violation of Article 3 of the ECHR. Specifically, the Panel found that UNMIK's attitude towards the complainants and their families regarding the investigations into the disappearance, abduction and/or killing of their relatives contributed to the complainants and their families suffering severe distress in contravention of the right to be free from inhuman or degrading treatment. Therefore, in addition to recommending all of the reparations regarding the violations of Article 2 of the ECHR, the Panel recommended that UNMIK also pay adequate compensation to the complainants for moral damage in relation to its violations of Article 3 of the ECHR.
68. In cases of violations of other provisions, such as violations of violation of Article 14, taken in conjunction with Article 6 of the ECHR, the Panel recommended compensation for non-pecuniary damage suffered as a result of discrimination. The Panel also recommended in one case, *Guga* (see §§ 58-61 above), that UNMIK urges EULEX and other competent authorities in Kosovo towards a review by the Special Chamber of the complainant's claim to a share of the proceeds of the privatization, if he so wished. In another case, *Ristić* (see §§ 62-63 above) the Panel also recommended that UNMIK urge EULEX and other competent authorities in Kosovo to take steps towards making possible the reopening by the Special Chamber of the complainant's case and its examination in accordance with ECHR standards, if the complainant so wished.

69. 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, the Panel is disappointed to report that UNMIK has followed almost none of the Panel's recommendations.

8. UNMIK's Reactions to the Panel's Recommendations

70. 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." The Panel is encouraged to note that UNMIK has continued to make an effort to publish more responses to the Panel's opinions than in previous years, publishing 99 in 2014. Nevertheless, the nature of UNMIK's responses, combined with UNMIK's failure to achieve any practical reparation or benefit for the complainants, indicates a lack of effective engagement by the SRSG regarding the substantive work of the Panel.

8.1. Continuing Investigations

71. Concerning the response of the SRSG to the Panel's MMP opinions, in 2013 EULEX created a Task Force, led by an international prosecutor, who reviews these unfinished MMP investigations and is charged with making recommendations to EULEX prosecutors and police about how to proceed. In 2014, the Panel's Secretariat repeatedly informed the SRSG that no information had been proffered from EULEX concerning any further investigations that it had undertaken on any of the Panel's MMP cases forwarded to them by UNMIK. In fact, the Secretariat had received information that some of the Panel's MMP cases had been closed by EULEX before they had been forwarded by UNMIK and have apparently neither been re-opened nor reviewed subsequent to HRAP's recommendations. More than a year after the creation of the EULEX Task Force, the Panel is not aware of any tangible results that have been achieved by it. Additionally, the Secretariat was informed that some of the cases have been transferred to the local authorities.
72. The Panel notes that in its letter of 6 February 2014 (see § 31 above), Amnesty International questioned UNMIK concerning information on "whether EULEX police have initiated any new investigations, or reopened investigations into any of the cases of missing persons covered by the HRAP's opinions." In response, the SRSG stated that while "UNMIK officials and I have taken up this matter with EULEX during our meetings... Only EULEX will be able to provide you with more detailed information on the initiation of new cases or the re-opening of investigations into cases of missing persons." The Panel notes with concern that despite recommending that UNMIK obtains assurances from EULEX that the investigations would be continued in compliance with the requirements of Article 2, apparently UNMIK has not obtained any assurances from EULEX about continuing investigations, and seemingly does not feel inclined to do so.

8.2. Public Apologies

73. Additionally, as the Panel also reported in the 2013 Annual Report, in relation to the Panel's recommendation that the SRSG make a public apology to the complainants and their families for the ineffective investigation, the SRSG has thus far sent a form letter to many of the complainants, in which he states "I deeply regret that there was a lack of an effective investigation into the abduction and death of your [loved one] which has caused you additional distress and mental suffering." In its letter of 6 February 2014 to the SRSG, AI stated, "Amnesty International is aware that the complainants have received personal letters from you. However, we also understand that many consider that this falls far short of the public apology, which was recommended, and which they continue to seek." The SRSG answered "in addition to individual letters to the complainants, all of my decisions and responses to the Panel's recommendations are made available in a public forum, on the HRAP website."
74. The Panel agrees with AI's concerns about the SRSG's personal letters to the complainants. As the Panel has noted before, it considers the SRSG's form letters to be neither meaningful apologies nor public apologies. With regard to the letters not being meaningful apologies, the Panel considers that if the SRSG's letter included significant statements to take remedial action in order in some small way to ameliorate the suffering of the complainants, then this could constitute a meaningful apology. However, the SRSG continues to stand behind the opinion that an expression of his deep regret, without more, is sufficient. The Panel disagrees. Concerning the public nature of the apology, the Panel finds that this single letter to the complainant does not constitute a public apology, and it does not become a public apology just by placing it on the Panel's website in a format that is not easily discoverable to persons unfamiliar with the specific case. For this reason, starting in October 2014, in the MMP cases where the Panel has found human rights violations attributable to UNMIK, the Panel's recommendations have included that the SRSG should "publically acknowledge, including through media, UNMIK's failure to conduct an effective investigation". However, as of the publication of this Report, the Panel has not seen any change in the manner that the SRSG has made his apologies, and has not been informed of the SRSG using any media for this purpose.

8.3. Compensation

75. In relation to the Panel's recommendation that the SRSG take appropriate steps toward the realisation of a full and comprehensive reparation programme, including restitution, compensation, rehabilitation and satisfaction, the Panel repeats its concern that the SRSG continues to deny UNMIK's liability. In response to the Panel's recommendations, the SRSG continues to inform complainants that "I wish to recall that the acts in question relate to activities carried out by the institutions established under the interim administration of Kosovo. As such, had UNMIK continued to have control over these institutions today, UNMIK would have been in a position to refer the Panel's recommendation to those institutions for appropriate action." This formula is how UNMIK has chosen to inform the complainants that there will be no compensation paid by UNMIK for its human rights violations. AI, among others has stated that "Amnesty International considers this response...to constitute an extraordinary attempt by UNMIK

to deny its liability for violations of the very human rights standards that it was created to uphold and respect.”¹²

76. In its letter of 6 February to the SRSG, AI again urged the SRSG “to ensure that UNMIK makes sufficient funds available to provide the relatives of the missing with adequate and effective compensation or moral damage when recommended by HRAP...” In response, the SRSG reiterated his earlier arguments. “With respect to providing adequate compensation to complainants, UNMIK’s position has not changed since 2012. As previously stated, since June 2008, UNMIK no longer has control over the Kosovo Consolidated Budget, from which compensations recommended by HRAP ought to be paid. Budgetary control is now exclusively exercised by local Kosovo authorities. Stating that I am prepared to discuss the possibility of setting up a mechanism to deal with such matters with the relevant authorities is a logical consequence of UNMIK’s inability to pay the compensations recommended by my Advisory Panel.”
77. The Panel reaffirms that it should be the UN’s responsibility to pay compensation for human rights violations, as these breaches were attributable to UNMIK. In fact, although the SRSG had issued a response years ago that “UNMIK will continue to draw the attention of the United National General Assembly to a need for a review of the current compensation rules, which exclude payment of compensation for non-pecuniary damage”, the Panel is not aware of any such effort made by the SRSG. In more recent responses to the complainants, the SRSG has stated that, “I am prepared to discuss the possibility of setting up a mechanism to deal with such matters with the relevant authorities at the appropriate juncture.” The Panel is also unaware of any such discussions, despite being repeatedly queried about this oversight from the Panel’s Secretariat, the complainants and AI. It is also worth noting that although the Secretary General makes quarterly reports to the Security Council on UNMIK drawn from information provided to him by the SRSG, there has been no reporting on HRAP or its opinions since August 2012.¹³
78. The Panel is disheartened to report that many of the complainants continue to address the Panel’s Secretariat after receiving the opinions in response to their complaint recommending that the UN compensate them for violating their human rights. These complainants, encouraged that they might receive some validation for their suffering, have asked the Panel’s Secretariat what they should do now, in order to actually receive this compensation. At this time, the Secretariat can only inform them that they should request

¹² For further discussion of this point, please see the 2013 HRAP Annual Report, §§ 100-104.

¹³ The Report of 3 August 2012 noted the appointment of a former Panel Member (Mr Paul Lemmens), to the European Court of Human Rights. It did not provide any substantive information about HRAP’s cases (see *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo* of 3 August 2012, S/2012/603 at § 39). This was prior to HRAP’s first published opinion for one of the complaints it had received alleging the lack of adequate criminal investigations into disappearances, abductions and killings, S.C. in December 2012. The Serbian news service *Vesti* discussed this lack of official UN reporting on HRAP in its online news publication of 3 March 2014, “*Od Srbije ni glasa Protesta*” (“*From Serbia, There is No Voice of Protest*”), which states “Not a Word. It was never mentioned in the UNMIK’s quarterly reports to the UN Security Council that the HRAP, as a separate organ of UNMIK, exists at all. Those reports have likewise never referred to any of more than 100 opinions delivered by the Panel, in which it identified that UNMIK has committed serious violations of human rights” (English translation).

further information from the SRSG, although the Panel finds it more and more apparent that the SRSG has no more valid information to give them, except “being prepared to discuss the possibility of setting up a mechanism to deal with such matters with the relevant authorities at the appropriate juncture.” Nevertheless, even this meager step has not been taken.

79. The Panel again stresses that, notwithstanding its lengthy process of issuing admissibility decisions, opinions, and recommendations, UNMIK remains basically unaccountable for its human rights violations. The Panel, which was established to offer some oversight of UNMIK’s compliance with human rights standards, has been unable to succeed in this function. As it stands now, the Panel does not see any meaningful activity undertaken by UNMIK in response to its recommendations. This inaction has ensured that the whole seven year HRAP project has generated no tangible benefits for the vast majority of complainants. The Panel therefore regrets that due to UNMIK’s inertia, there has been no redress for the complainants. As such, they have been victimized twice by UNMIK: by the original human rights violations committed against them and again by putting their hope and trust into this process. The Panel once again exhorts UNMIK and the United Nations to undertake some beneficial activity on behalf of the complainants before the HRAP’s mandate concludes.

9. Conclusions

80. The Panel spent a considerable amount of 2014 deliberating cases and issuing opinions on the complaints related to MMPs. With only a few exceptions, in almost all of the opinions the Panel found that UNMIK had committed violations of Article 2 of the ECHR, by failing to carry out an adequate and effective investigation into the disappearance or abduction and/or killing of the complainants’ close relatives. As the Panel found many of the cases had similar deficiencies, in 2014 the Panel put on record for the first time that it considered that the failures committed by UNMIK were systemic (see § 50 above).
81. In many of the MMP opinions, the Panel found that UNMIK also committed violations of Article 3 of the ECHR. Specifically, the Panel found that UNMIK’s attitude towards the complainants and their families regarding the investigations into the disappearance, abduction and/or killing of their relatives contributed to the complainants and their families suffering severe distress in contravention of the right to be free from inhuman or degrading treatment.
82. Overall, in the year 2014, in closing another 97 cases, the Panel continued to make process towards completing all of the cases on its docket. At the end of 2014, there were 88 cases awaiting an opinion on the merits. Among these are some key cases for which the Panel expects to issue opinions in the coming months (see §§ 37-40 above). In fact, the Panel anticipates concluding its work in 2015 by finishing all of its remaining cases.
83. As the Panel is close to finishing its work, it is even more important that UNMIK takes this opportunity to follow the Panel’s recommendations before the HRAP’s mandate concludes and provide pecuniary remediation to the complainants whose human rights it has violated. As such, the Panel notes that that in 2014 UNMIK has become more involved in the

process by making an effort to publish more responses to the Panel's opinions (see § 70 above). However, the Panel has serious concern regarding UNMIK's failure thus far to achieve any practical reparation or benefit for the complainants. In order to offer some measure of solace to these persons that have already lost so much, and to give meaning to the Panel's work as a body aimed at providing human rights accountability to UNMIK, the Panel, as it has already recommended, calls on UNMIK and the United Nations to find some method to offer some redress to the victims for violating their human rights.

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 2014
- Annex E: HRAP Chart of Complaints Received by Year
- Annex F: HRAP Chart of 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 years¹⁴. The appointment may be renewed for further terms of two years.

Section 6 Oath or Solemn Declaration

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

"I do hereby solemnly declare that:

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

In carrying out the functions of my office, I shall uphold at all times the highest level of internationally recognized human rights standards, including those embodied in the principles of the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental

¹⁴ The term in office for Panel Members was reduced to one year, renewable, by the UNMIK Regulation No. 2007/3 of 12 January 2007.

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:

HRAP Caseload, Communications & Determinations (as of 31 December 2014)

Caseload		2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Received		3	12	69	353	90 ¹⁵	n/a	n/a	n/a	n/a	527
Closed		0	0	18	11	35 ¹⁶	98	95	85	97	439
Pending		3	15	66	408	463	365	270	185	88	88
Determinations by Type		2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Total		0	0	32	26	84	213	270	90	103	818
Admissibility Decisions		0	0	28	22	56	164	238	10	3	521
Partial Admissibility Decisions		0	0	2	0	1	0	0	-	-	3
Strike off the List		0	0	0	3	5	2	6	-	-	16
Opinions on the Merits		0	0	1	0	22	46	23	79	96	267
Partial Opinions on the Merits		0	0	0	1	0	0	0	-	-	1
Requests for Revision and Re-opening		0	0	1	0	0	1	3	2	4	11
Determinations by Finding		2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Decisions	Admissible	0	0	11	2	16	63	112	2	-	206
	Partially Admissible	0	0	2	9	25	51	60	2	2	151 ¹⁷
	Inadmissible	0	0	17	8	10	50	66	6	1	158
Opinions: Violation		0	0	1	0	21	45	21	76	88	252
Opinions: No Violation		0	0	0	1	1	1	2	3	8	16 ¹⁸
Requests for Revision:	Refused	0	0	1	0	0	1	1	2	4	9
	Granted	0	0	0	0	0	0	2	-	-	2

¹⁵ Following the Panel's review, case no. 25/10 was split in two cases (new case no. 90/10)

¹⁶ Two cases (no. 04/07 and 26/08) declared inadmissible in 2010, have been re-opened by the Panel in 2012.

¹⁷ Three of them are "partial admissibility" decisions.

¹⁸ One of them is a partial opinion on the merits.

Annex D:**HRAP Decisions and Opinions Issued in 2014****Decisions Admissible in Part: 2 (2)**

1. MILADINOVIĆ, Nebojša, 331/09 - decision of 14 March 2013
2. KRASNIQI, Tomë, 08/10 - decision of 6 June 2013

Decision on request to re-open Proceedings: 4 (4)

1. JUGOBANKA I, 57/10 - decision of 12 February 2014
2. JUGOBANKA II, 58/10 - decision of 12 February 2014
3. R. A., 41/09 - decision of 13 March 2014
4. RISTIĆ, Nevenka, 319/09 - decision of 23 October 2014

Decisions Inadmissible: 1 (1)

1. M. M. and M. V., 352/09 - decision of 29 May 2014

Opinions: Violation 53 (88)

1. MARKOVIĆ, Aleksandar and MARKOVIĆ, Ljubinka, 91/09 and 338/09 - opinion of 23 January 2014
2. VUJAČIĆ, Ivan, 118/09 - opinion of 23 January 2014
3. VITOŠEVIĆ Tatjana, MAJMAREVIĆ Veska and MAJMAREVIĆ Nataša, 139/09, 218/09 and 325/09 - opinion of 23 January 2014
4. ANĐELJKOVIĆ, Luka, 277/09 - opinion of 23 January 2014
5. GUGA, Fillim, 47/08 - opinion of 24 January 2014
6. ČELIĆ, Kenan and FAZLIJA, Enver, 51/09 and 53/09 - opinion of 14 February 2014
7. STANOJKOVIĆ, Danica and STOJKOVIĆ, Milosav, 105/09 and 106/09 - opinion of 14 February 2014
8. KNJEŽEVIĆ, Goran, 141/09 - opinion of 14 February 2014
9. MILENKOVIĆ, Milko 127/09 - opinion of 13 March 2014
10. PEJČINOVIĆ, Milorad, 89/09 - opinion of 13 March 2014
11. ŠABIĆ, Zvonko, 137/09 - opinion of 13 March 2014
12. MITIĆ, Srboľjub, MITIĆ, Slavi, ĐEKIĆ, Smiljana, MARKOVIĆ, Spasena, MARKOVIĆ, Todor, JOVANOVIĆ, Stanomir and JOVANOVIĆ, Marija, 63/09, 64/09, 65/09, 66/09, 109/09, 113/09, 162/09, 300/09 and 301/09 - opinion 14 March 2014
13. S. M., 110/09 - opinion of 12 April 2014
14. P. R. 120/09 and 121/09 - opinion of 14 April 2014
15. PETKOVIĆ, Nebojša, 125/09 and 126/09 - opinion of 14 April 2014
16. KORIĆANIN, Sonja, 167/09, 174/09 and 175/09 - opinion of 14 April 2014
17. KLJAJIĆ, Nedeljka, 80/09 - opinion of 29 May 2014

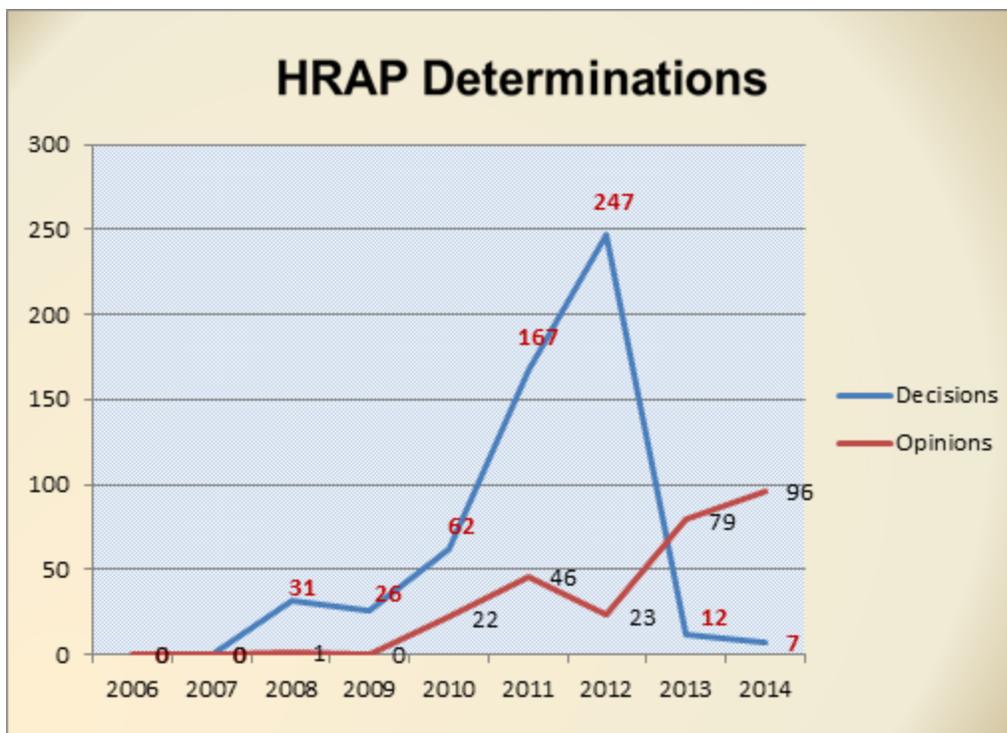
18. JOVANOVIĆ, Kata, 84/09 - opinion of 29 May 2014
19. RADOVANOVIĆ, Biljana, 154/09, 155/09 - opinion of 29 May 2014
20. MILANOVIĆ, Zlatana, 339/09 - opinion of 29 May 2014
21. RISTIĆ, Nevenka, 319/09 - opinion of 30 May 2014
22. MARKOVIĆ, Spasena, 349/09 - opinion of 25 June 2014
23. MILADINOVIĆ, Nebojša, 331/09 - opinion of 25 June 2014
24. MLADENOVIĆ, Milica, 99/09 - opinion of 26 June 2014
25. MARKOVIĆ, Radmila, 214/09 - opinion of 26 June 2014
26. V. Lj., Đ. M. and S. D., 291/09, 292/09 and 296/09 - opinion of 26 June 2014
27. IBRAJ, Muharem, 14/09, 15/09, 18/09, 19/09, 20/09 and 21/09 - opinion of 6 August 2014
28. ČUNGUROVIĆ, Živka, 131/09 - opinion of 6 August 2014
29. ZOGOVIĆ, Slavica, 152/09 - opinion of 6 August 2014
30. MLADENOVIĆ, Nenad, 171/09 - opinion of 6 August 2014
31. SĆEKIĆ, Radojka, 212/09 - opinion of 6 August 2014
32. ŠLJIVIĆ-ĆERANIĆ, Liljana, 237/09 and 238/09 - opinion of 6 August 2014
33. RADISAVLJEVIĆ, Radivoje, 156/09 - opinion of 17 September 2014
34. CVIJANOVIĆ, Anka, 170/09 - opinion of 17 September 2014
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37. TOMIĆ, Radmila, 160/09 - opinion of 22 September 2014
38. ANTIĆ-ŽIVKOVIĆ, Dobrila, 147/09 - opinion of 17 October 2014
39. PATRNOGIĆ, Verica, 252/09 - opinion of 17 October 2014
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42. BUDIMIR, Olivera, 219/09 - opinion of 17 October 2014
43. BIŠEVAC, Angelina, 223/09 - opinion of 17 October 2014
44. JANKOVIĆ, Cica, 249/09 - opinion of 17 October 2014
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49. VUJAČIĆ, Draginja, 226/09 - opinion of 14 December 2014
50. BIOČANIN, Zlata, 229/09 - opinion of 14 December 2014
51. ŠMIGIĆ, Bogoljub, 264/09 and 265/09 - opinion of 14 December 2014
52. STEVANOVIĆ, Marija, 289/09 - opinion of 14 December 2014
53. NIKOLIĆ, Lela, KABAŠ, Rosanda and PETROVIĆ, Milan, 72/09, 73/09, 74/09, 75/09, 76/09, 78/09, 95/09 and 96/09 - opinion of 14 December 2014

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2. REMIŠTAR, Slađana, 245/09 - opinion of 17 October 2014
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Annex E



Annex F



Annex G**ABBREVIATIONS AND ACRONYMS**

AI – Amnesty International
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
HLC- Humanitarian Law Centre
HRAP - Human Rights Advisory Panel
HRC - United Nations Human Rights Committee
IACtHR - Inter-American Court of Human Rights
ICESCR – International Covenant on Economic Social and Cultural Rights
ICMP- International Commission on Missing Persons
ICRC - International Committee of the Red Cross
ICTY- International Criminal tribunal for the former Yugoslavia
KFOR - International Security Force (commonly known as Kosovo Force)
KLA - Kosovo Liberation Army
KTA- Kosovo Trust Agency
LCP- Yugoslav Law on Criminal Proceedings
MMP - Missing/Murdered Person
RTK- Radio and Television of Kosovo
SRSG - Special Representative of the Secretary-General
UN - United Nations
UNGA- United Nations General Assembly
UNMIK - United Nations Interim Administration Mission in Kosovo