



The Human Rights Advisory Panel

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Faint background graphics including a laurel wreath on the left and a stylized map of Kosovo on the right, overlaid on a grid pattern.

Annual Report 2009

Foreword

This is the second annual report of the Human Rights Advisory Panel (hereafter referred to as “Panel”) covering the Panel’s activity during 2009.

In 2009, it became apparent that UNMIK had not thoroughly considered all the consequences which might result from the establishment of the Panel in 2005-2006 when formulating its concept, legal foundation and organizational undertaking, as laid down in UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. The Regulation refers to the nature of the Panel, the degree of its independence and its procedures for examining complaints. In addition, UNMIK did not fully assess the Panel’s essential practical needs and, as a result, did not provide for the appropriate number of administrative personnel, the requisite number of lawyers, etc. The negative consequences of these shortcomings – evident from the start of the Panel’s activity, *i.e.* from the beginning of Autumn 2007 and described in its first annual report for 2008 – came into even sharper focus in 2009. By that time, and especially in the first half of 2009, the number of cases had been rapidly growing. The small Secretariat and the Panel itself were not able to cope adequately with the caseload. Matters were further complicated by the Panel’s commencement of substantive examination of cases involving issues that are, for a variety of reasons, delicate and difficult.

At the same time, 2009 was a year of intensified efforts by members of the Panel and its Secretariat to make progress in dealing with the largest number of cases possible, irrespective of the aforementioned obstacles. However, this was also a period of continuing tension in its relations with UNMIK, mainly concerning differing interpretations of numerous important aspects related to the nature of the Panel, its role and its procedures. Over time the situation became the subject of protracted discussions within the United Nations. Various institutions and organizations involved in human rights protection in Kosovo publicly expressed their concerns over certain aspects of the situation of the Panel, including the Human Rights Commissioner of the Council of Europe, Amnesty International and Human Rights Watch.

UNMIK Administrative Direction No. 2009/1, issued by the Special Representative of the Secretary-General on 17 October 2009, introduced changes that significantly limited the Panel’s role and mode of functioning. Although its declared aim was merely to interpret certain provisions of UNMIK Regulation No. 2006/12, the said Regulation was in fact amended. The Panel did not welcome these changes, and even criticized them at the consultation stage. It nevertheless hopes that the new regulatory framework will allow it to perform its activities in a serene climate.

Another serious hindrance to the Panel’s activity in 2009 was the lengthy period without an appointment of a new member to replace Ms Snezhana Botusharova, who resigned in June 2009 to become a member of the Constitutional Court of Kosovo. The appointment of her successor, Ms Christine Chinkin, was eventually made in mid-January 2010 and she took her oath of office in mid-February 2010. In the meantime, however, the Panel could not make any determination on the admissibility or the merits of complaints.

Nonetheless, during the relevant period, numerous cases were prepared for decisions or opinions through often complex, adversarial procedures involving the complainants and UNMIK, and sometimes also other institutions. Importantly, one of the most difficult tasks successfully undertaken in this period by the Panel and its Secretariat was the elaboration of procedures and methods of dealing with cases brought to the Panel in Spring 2009, which related to an alleged lack of adequate and effective investigation by UNMIK concerning forced disappearances or deaths in Kosovo during various periods beginning in 1998. These cases currently represent the largest group of matters awaiting examination by the Panel.

In spite of all these difficulties and the problems encountered during 2009, the Panel is determined to meet its expectations as an important instrument for the protection of human rights in Kosovo and as a model for similar UN or other missions in various parts of the world.

Marek Nowicki
Presiding Member
Human Rights Advisory Panel
March 2010

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 2006¹, 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 second full year of operation in Prishtinë/Priština, Kosovo. The Panel remains the only mechanism that deals with human rights violations allegedly committed by or attributable to a United Nations field mission. In light of its unique role, the Panel continued to face novel challenges in 2009.

2. This annual report covers the period beginning 1 January 2009 and ending 31 December 2009, during which the Panel conducted 11 sessions, received three-hundred and fifty-one new complaints², and communicated seventy-one cases to the Special Representative of the Secretary-General (SRSG) for comments on the admissibility and/or merits of the complaints. During the first nine months of 2009³, the Panel adopted one partial opinion on the merits, found a further 11 complaints admissible or admissible in part, eight complaints inadmissible and struck three complaints from the list. The relatively low number of determinations should be viewed in light of the following practical limitations faced by the Panel during the course of 2009.

3. Following the resignation of one of the Panel Members in June 2009 to accept a position as an international judge with the Constitutional Court of Kosovo, the Panel remained with only two full time members for the remainder of the year. With the subsequent promulgation of UNMIK Administrative Direction No. 2009/1, Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 17 October 2009⁴ (discussed further, *infra*), the Panel was no longer able to make any determinations on complaints following the resignation of one of its members until such time as the third Panel Member is appointed.⁵

4. At the same time, due the downsizing of UNMIK the Panel's Secretariat went through radical changes in composition during 2009. The staff fluctuated from a high of ten staff members in May 2009 down to four full time staff by the end of June 2009, comprising two legal officers and two administrative assistants. While the Secretariat continues to process cases and prepare them for determination by the Panel, the disruption caused by legislative changes and staff turnover limited public pronouncements of the Panel from July 2009 onwards. In early 2010 the Panel has been fully constituted again, so that it will be able to continue rendering determinations on the many allegations of human rights violations pending by the end of 2009.

¹ Attached as Annex A.

² It is noteworthy that due to a shortage of translators at UNMIK, approximately 123 complaints remained untranslated at the end of 2009 and as such the Panel has been unable to review them.

³ See the discussion of UNMIK Administrative Direction No. 2009/1 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, *infra*.

⁴ Attached as Annex B.

⁵ Section 3.2 of UNMIK Administrative Direction No. 2009/1.

2. Composition of the Panel

2.1. Panel Members

5. The three part-time Panel members, nominated by the President of the European Court of Human Rights and (re-)appointed by the SRSG in accordance with UNMIK Regulation No. 2006/11 as of 1 January 2009 were Mr Marek Nowicki (Poland), Mr Paul Lemmens (Belgium), and Ms Snezhana Botusharova (Bulgaria). The Panel elected Mr Marek Nowicki as its Presiding Member in January 2008 and re-elected him as its Presiding Member in 2009⁶.

6. Ms Snezhana Botusharova resigned from the Panel on 15 June 2009 to take up an appointment as an international judge with the Constitutional Court of Kosovo.

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

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

9. 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.

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

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

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

⁶ HRAP Rules of Procedure, Rule 6.

Council of State's contentious section, which constitutes the Supreme Administrative Court of Belgium.

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

14. **Snezhana Botusharova** (May 2008-June 2009) is a Bulgarian citizen and was concurrently an international judge in the Court of Bosnia and Herzegovina and a member of the Panel. From November 1998 until April 2008 she was a Judge in the European Court of Human Rights.

15. Ms Botusharova obtained her Doctor of Law degree from the Lomonosov University of Moscow. She worked as an attorney-at-law at the Sofia Bar before becoming a professor of constitutional law at the Kliment Ohridski Sofia University, the New Bulgarian University in Sofia and the Neofit Rilski University in Blagoevgrad.

16. Ms Botusharova was a member of the Bulgarian Grand National Assembly on behalf of the Union of Democratic Forces and she was one of the authors of the new Bulgarian Constitution. She was re-elected to the 36th National Assembly and was its Deputy Chairperson and acting Chairperson from September to November 1992. As a Member of Parliament she took part in various legislative activities preparing the legal basis for Bulgaria's transition to democracy and rule of law. She was also a member of the European Commission for Democracy through Law of the Council of Europe from 1991 to 1994 and, in this capacity, prepared legal opinions on the draft Constitutions of Ukraine, the Russian Federation and Moldova. From 1994 to 1998 Ms Botusharova served as the Republic of Bulgaria's Ambassador Extraordinary and Plenipotentiary to the United States of America. Ms Botusharova is the author of books and articles on constitutional law, in particular the new Bulgarian Constitution and on human rights issues.

17. Ms Botusharova currently serves as an international judge in the Constitutional Court of Kosovo.

2.2. Secretariat of the Panel

18. The Secretariat of the Panel consists of an Executive Officer, two legal officers and two administrative assistants. The Executive Officer post was vacant from the end of June 2009 and the two legal officers who joined the Secretariat in May and June of

2009 handled Executive Officer duties throughout the remainder of 2009⁷. Biographical information is provided hereunder on members of the Secretariat who served during 2009.

2.2.1. Members of the Secretariat at the end of 2009

19. **Nedim Osmanagić**, a Bosnian citizen, joined the Secretariat as a legal officer at the end of June 2009 and was the Officer-in-Charge of the Secretariat and its Acting Executive Officer for the remainder of the year. Mr Osmanagić brings to the Secretariat his experience as Deputy Ombudsperson for Bosnia & Herzegovina, Human Rights Officer in the Office of the High Commissioner for Human Rights in Prishtinë/Priština, Senior Judicial Inspector with UNMIK, Legal Officer for the Council of Europe's Venice Commission, UNMIK and UNMBIH, and Human Rights Adviser for the OSCE Mission in Bosnia & Herzegovina and UNDP Somalia.

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

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

22. **Mimoza Arifi-Hoxha**, a national staff member, has been an administrative assistant with the Secretariat since November 2008. She commenced employment with the United Nations in December 1999 as an administrative assistant with the UNMIK Division of Public Information/Press Office.

2.2.2. Members of the Secretariat who served during the first half of 2009

23. During 2009, the Secretariat saw the departure of its longstanding former Executive Officer.

24. **John J. Ryan**, an Irish citizen, was the Executive Officer of the Secretariat from September 2007 to June 2009. Formerly a Solicitor with Stephen MacKenzie and Co. Solicitors, Dublin, Ireland, he also was employed as the Head of the UNMIK Department of Justice's International Judicial Support Division and thereafter as Senior Legal Officer, OSRSG, UNMIK. Mr Ryan is a graduate of the University of Limerick, Ireland, with a Bachelor of Laws (Hons.) in Law and European Studies and a graduate of the Law School of the Incorporated Law Society of Ireland.

⁷ Mr Rajesh Talwar joined the Secretariat as its new Executive Officer in February 2010.

25. The Panel is grateful to Mr Ryan, who set up the Secretariat and who skilfully guided the Panel through its first years of operation.

26. Thanks to the generosity of the Finnish government, but also as an unexpected effect of the downsizing of the UNMIK Department of Justice, the Secretariat was able to obtain the services of the human rights officer and legal officers listed below for varying periods during the first half of 2009.

27. **Elina Castren**, a Finnish citizen, served as a human rights officer with the Secretariat from December 2008 through June 2009 on secondment from the Government of Finland. Ms Castren left the Panel in June 2009 to join the European Union Rule of Law Mission in Kosovo (EULEX) in June 2009 as a legal officer in the District Court of Gjilan/Gnjilane.

28. **Bernadette Foley**, an American citizen, served as a legal officer with the Secretariat from December 2008 through June 2009. She was previously employed as a Senior Judicial Inspector with the UNMIK Office of the Disciplinary Council. From 2005 to 2006 she managed, designed and delivered a training program for investigators of judicial and prosecutorial misconduct in a joint UNDP/UNMIK project. From 2002 to 2004 she was a Visiting Faculty Fellow teaching law at a Russian university under the auspices of the Open Society Institute's Civic Education Project. From 1986 until 2001, she was a trial and appeal lawyer in the United States in the area of criminal and mental health law.

29. **Jerina Dampier**, an American citizen and member of the New York Bar, served as a legal officer with the Secretariat from February 2009 through May 2009. Previously, Ms Dampier served as a legal officer with the UNMIK Department of Civil Administration, UNMIK Department of Justice's Criminal Division and the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters. Ms Dampier is currently a legal adviser to the President of the International Judicial and Prosecutorial Commission in Kosovo.

30. **Butera Mpira**, a Rwandan citizen, served as a legal officer with the Secretariat from March 2009 through June 2009. Previously, Mr Mpira served as a legal officer with the UNMIK Department of Justice's International Judicial Support Division and with the Nongovernmental Organization Nonviolent Peaceforce in Sri Lanka. Mr Mpira is currently a lawyer in private practice in Kigali, Rwanda.

31. **Chiara Rojek**, a French citizen, served as a legal officer with the Secretariat from March 2009 through June 2009. Previously, Ms Rojek served as a legal officer with the UNMIK Department of Justice's International Judicial Support Division and as a legal officer with the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

3. Regulatory Framework

3.1. Regulation No. 2006/12

32. The key legislative text for the operation of the Panel remains UNMIK Regulation No. 2006/12 which vests the Panel with jurisdiction to hear a wide range

of human rights complaints allegedly attributable to UNMIK under the following instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. The Panel's temporal jurisdiction runs from 23 April 2005⁸.

33. The procedure before the Panel consists of two primary stages⁹: first, the examination of the admissibility of the complaint; and, second, if the complaint is declared admissible, the examination of the merits of the complaint. The admissibility is determined by a formal decision, containing the reasoning for the decision. In some cases the Panel has taken a partial decision on the admissibility first, and then determined the remaining admissibility issues by a final decision. Decisions are placed on the Panel's website after the parties to the proceedings have been notified. If the Panel declares the entire complaint, or part of it, admissible, it then commences its consideration of the merits of the complaint.

34. If the complaint proceeds to an examination of the merits, the Panel will produce an opinion on whether there was a violation of the complainant's human rights, which may contain recommendations to the SRSG¹⁰. Once an opinion has been provided to the parties, it is also published on the Panel's website¹¹. From there, the SRSG retains exclusive authority to decide whether to act on the findings of the Panel.¹²

3.2. Administrative Direction No. 2009/1

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

36. A first procedural issue determined by the Administrative Direction concerns the possibility for the SRSG to comment on the admissibility of the complaint. Indeed, unless a complaint is at once declared inadmissible, the Panel normally¹³ communicates the complaint to the SRSG for his comments on the admissibility. Since one of the admissibility requirements is that the complaint may not be manifestly ill-founded¹⁴, it has been a standard practice to invite the SRSG to comment at the same time on the admissibility and the merits. Section 2.3 of UNMIK

⁸ UNMIK Regulation No. 2006/12, Section 2. See also paragraph 45, *infra*.

⁹ For a further description of the procedure before the Panel, see part 4 of this report.

¹⁰ UNMIK Regulation No. 2006/12, Section 17.1.

¹¹ UNMIK Regulation No. 2006/12, Section 17.2.

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

¹³ But see HRAP Rules of Procedure, Rule 29bis, inserted on 11 September 2009 (discussed *infra*).

¹⁴ UNMIK Regulation No. 2006/12, Section 3.3.

Administrative Direction No. 2009/1 now provides that “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”.

37. In some cases, where the Panel found that the admissibility of the complaint was closely linked to the merits, *e.g.* in cases where the complaint was about the ineffectiveness of a remedy or an investigation, or about the lack of access to a court, it has in its decision on the admissibility joined the admissibility issue to the examination of the merits. Section 2.1 of UNMIK Administrative Direction No. 2009/1 seems to react to this practice, where it provides that the Panel “shall examine all issues of admissibility before examining the merits”.

38. Section 2.1 of UNMIK Administrative Direction No. 2009/1 also states that issues of admissibility shall be examined “at any stage of the proceedings”, which implies that new admissibility issues can be raised at any moment, even after a complaint has been declared admissible. Section 2.3 of UNMIK Administrative Direction No. 2009/1 confirms this reading where it provides: “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 consideration of the merits, the Advisory Panel shall suspend its deliberation on the merits until such time as the admissibility of the complaint is fully re-assessed and determined anew.” The Panel is concerned that the latter provision could lead to situations where a new objection to the admissibility of a complaint previously declared admissible results in a considerable delay in the proceedings.

39. As far as the admissibility criteria are concerned, Section 2.2 of UNMIK Administrative Direction No. 2009/1 is of utmost importance. It states: “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 amended¹⁵, 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 (Regulation No. 2006/12).” This provision has the effect of removing the Panel’s competence to assess the effectiveness of the UN Third Party Claims Process¹⁶, in the light of the requirement that “all ... available revenues for review of the alleged violations have been pursued” (Section 3.1 of UNMIK Regulation No. 2006/12). UNMIK Administrative Direction No. 2009/1 applies not only to complaints filed after its issuance, but also to all pending complaints (Section 6).

¹⁵ Section 7 of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their personnel in Kosovo reads as follows: “Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to KFOR, UNMIK or their respective personnel and which do not arise from ‘operational necessity’ of either international presence, shall be settled by Claims Commissions established by KFOR and UNMIK, in the manner to be provided for.”

¹⁶ The UN Third Party Claims Process is the object of Resolution 52/247 of the General Assembly of 17 July 1998 on “Third-party liability: temporal and financial limitations” (A/RES/52/247). The above-mentioned Section 7 of UNMIK Regulation No. 2000/47 constitutes the implementation of the said resolution in the UNMIK context.

40. The concrete effect of the new provision will have to be determined on a case-by-case basis. However, it is safe to expect that a number of complaints, including some of the more high-profile ones, will have to be declared inadmissible. As has been indicated above, an admissibility issue on the basis of Section 2.2 of UNMIK Administrative Direction No. 2009/1 can be raised even in cases where the Panel has declared the complaint admissible and where it is in the stage of examining the merits.

41. UNMIK Administrative Direction No. 2009/1 also regulates the organisation of public hearings. Section 1.1 states that “public hearings (...) 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”. The non-adversarial character of the proceedings is mentioned again in Section 1.4, according to which “the venue and seating arrangements for public hearings conducted by the Advisory Panel shall be consistent with the non-adversarial nature of the proceedings”. While it may be surprising for the SRSG to give instructions to the Panel with respect to the venue of a hearing and even the seating at a hearing, it is clear that the main purpose of the said provisions is to stress the non-adversarial character, not only of the hearing, but of the proceedings before the Panel as a whole. On this point, the Panel is of the opinion that it is hard to reconcile the Administrative Direction with the spirit, if not the wording, of UNMIK Regulation No. 2006/12.¹⁷ Furthermore, the Administrative Direction considerably reduces the usefulness of any hearing. Section 1.2 indeed provides that “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”, while “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 allegation before it”. This provision not only confirms that the hearing is non-adversarial, in that the parties cannot comment on each other’s submissions, but it also limits the purpose of the hearing to a mere clarification of the facts (already mentioned in the written submissions), thus excluding any discussion of legal issues. In the light of the provisions of UNMIK Administrative Direction No. 2009/1, which significantly limit the purpose that may now be pursued with a hearing, it is unlikely that such a hearing will be held in the future¹⁸.

42. Another issue regulated by UNMIK Administrative Direction No. 2009/1 is the procedure for the appointment of its members. According to Section 5.1 of UNMIK Regulation No. 2006/12, “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”. This provision can be seen as a guarantee of the independence (*vis-à-vis* UNMIK and the SRSG) of the Panel and its members.

¹⁷ Section 11.3 of UNMIK Regulation No. 2006/12 provides that the SRSG shall have an opportunity to submit a response on behalf of UNMIK to the complaint, once it is declared admissible. Section 11.4 allows the Panel to request the complainant and UNMIK to make further written submissions. These provisions show that it was the intention of the drafters to involve the complainant and UNMIK in a procedure where they would be able to present their views and to comment on each other’s views. It is then the task of the Panel, according to Section 17.1, to issue findings as to whether there has been a breach of human rights, which necessarily involves a taking into account of the submissions made by both the complainant and UNMIK.

¹⁸ See paragraph 71, *infra*.

Section 3.1 of UNMIK Administrative Direction No. 2009/1 now provides that the President of the European Court “shall propose in compliance with the applicable UN procurement rules a sufficient number of suitable candidates for appointment (...). 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”.

43. Section 3.2 of UNMIK Administrative Direction No. 2009/1 provides that, “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 (...)”. This provision had the effect of precluding the Panel from taking any decision on admissibility or adopting any opinion on the merits from the date of issuance of the Administrative Direction until the date of the solemn declaration to be made by the Panel’s new third member.¹⁹

44. Not much is to be said about Section 4 of UNMIK Administrative Direction No. 2009/1, which orders the Panel to make its publications, announcements and press releases through the UNMIK Office of the Spokesperson and Public Information. The Panel appreciates the confirmation of the said Office’s availability to assist the Panel in its announcements. In the past, the Panel has been able to send out its annual report and its (relatively rare) press releases directly to persons and organisations on its mailing list, before they were placed on the Panel’s website by the said Office.

45. Finally, Section 5 of Administrative Direction No. 2009/1 provides for a cut-off date for the submission of complaints to the Panel: 31 March 2010. Complaints received after that date will have to be refused. This provision must be read in the context of UNMIK’s reconfiguration, due to the difficulties it is facing in exercising its mandate under Security Council Resolution 1244 (1999).²⁰

3.3. Rules of Procedure

46. On 11 September 2009 the Panel amended its Rules of Procedure by inserting a Rule 29*bis*. The new rule makes it possible for the Panel to declare a complaint admissible at once, i.e. without communicating the complaint to the SRSG. This rule was made necessary because of the growing number of repetitive complaints.

47. On 21 November 2009 the Panel again amended its Rules of Procedure, by inserting a Rule 39*bis*. The new rule provides for restrictions on disclosure of evidence. Disclosure remains the general rule, but the Panel may authorise that certain evidence will not be disclosed to the other party in the proceedings, “in order to safeguard an important public interest or to preserve the fundamental rights of the complainant or of any other person concerned”. The new rule is a response to difficulties encountered in certain cases concerning missing persons, where the matter was still under police investigation.

¹⁹ As indicated above, Ms Botusharova had resigned in June 2009. Her successor, Ms Christine Chinkin, made the solemn declaration in February 2010.

²⁰ See the report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, no. 21. See further, *infra*, paragraph 61.

4. Processing of Complaints

48. The Panel considers it useful to describe the way complaints are processed based on its practice during the period under review²¹.

49. Complaints are initiated by persons who believe that UNMIK, or an authority under the control of UNMIK, has in some way violated their human rights. Complainants normally utilize the complaint forms available on the Panel's website for the filing of their complaints. Often, complainants' submissions contain scant information and may attach a few documents. Occasionally, complainants represented by counsel file detailed complaints in formats usually associated with the filing of legal briefs before courts and tribunals in the region.

50. Upon receipt of the initial complaint, the Secretariat assigns a case number and sends the complaint for translation into English. Upon receipt of the translated case, the Presiding Member reviews it and assigns a rapporteur from amongst the Panel members who is then responsible for the carriage of that case through the Panel's procedure.²² Either the Presiding Member or the Executive Officer assigns a legal officer to the case as well.

51. The Rapporteur and the legal officer both conduct initial examinations to determine whether there is enough information contained in the complaint for the Panel to decide whether the case is admissible. The legal officer is often the first person to review the case. If, upon reviewing the case, the legal officer notes that the complaint can be easily placed into the framework of existing Panel practice, he or she will take the required action (requesting certain information from the complainant, UNMIK, or third parties, for instance). If the complaint raises new or complex issues, the complaint is then set aside and the initial examination takes place during the Panel's next deliberation.

52. Regardless of whether the legal officer is able to take any initial action regarding that case, the complaint is presented for discussion at the next Panel session by the rapporteur. The Panel will then direct the Secretariat to take any necessary actions and may decide preliminary questions such as whether the case should be joined to other cases before the Panel,²³ or communicated to the SRSG for comments on admissibility.

53. If further information is requested from the parties,²⁴ then, upon receipt and translation of the response, it is evaluated by the Panel. If there is still not enough information to determine whether the complaint is admissible, the complainant will be approached again or further information will be sought from the complainant, UNMIK, or a third party²⁵. If there is enough information to determine all admissibility issues, the Panel will deliberate on the complaint and determine whether

²¹ HRAP Case Flow Chart is attached as Annex D.

²² HRAP Rules of Procedure, Rule 28.

²³ See HRAP Rules of Procedure, Rule 20.

²⁴ UNMIK Regulation No. 2006/12, Section 11.2

²⁵ While at times the complaint may contain all the information in the possession of the complainant and enough to make out a prima facie case, often additional information must be sought from UNMIK or third parties in order to have complete picture of the events giving rise to the complaint.

it should be declared admissible or inadmissible. Exceptionally, it can also be struck from the list²⁶.

54. If the complaint is not clearly inadmissible and does not raise questions that are substantially the same as those that have been raised in other complaints which have already been declared admissible²⁷, the Panel will communicate the complaint to the SRSG for comments on the admissibility of the complaint.²⁸ The SRSG's comments on the admissibility of the complaint are reviewed and, so long as no information is included that has been the subject of a request for restrictions on the disclosure of evidence that the Panel subsequently grants²⁹, the comments will be sent to the complainant either for their further comments or merely for information, depending on the nature of the comments. After this process is concluded and the Panel is satisfied that both sides have been able to provide their comments on the issue(s), the Panel will deliberate again on the matter and take a position on the admissibility of the complaint.³⁰ The rapporteur or the legal officer will then prepare the decision on admissibility³¹.

55. Once the Panel adopts the decision, it is signed by the Presiding Member and the Executive Officer³² and translated into Albanian and Serbian. Once the translation is complete for the language used by the complainant, the decision is sent to the complainant and UNMIK. Once the decision is received by the parties, and translations are complete, it is published online in English, Albanian and Serbian.

56. If the case is declared completely inadmissible or struck off the list, then the case is closed.³³

57. However, if the entire case or part of it is declared admissible, then the Panel must begin to consider the merits of the case.³⁴ Upon receiving the decision declaring a complaint admissible, UNMIK must reply with its comments on the merits of the complaint within twenty days of receipt of the decision³⁵. In practice however, the Panel often extends the twenty day time-limit following a request from the SRSG.

58. During the exchange of views and information gathering process, the Panel will deliberate on the merits of the complaint as necessary. Once the parties have exchanged their views and the Panel has gathered all the required information, the Panel will again deliberate on the merits of the complaint and determine whether the facts amount to a violation of the complainant's human rights. The rapporteur or the

²⁶ HRAP Rules of Procedure, Rule 29.

²⁷ HRAP Rules of Procedure, Rule 29*bis*, inserted on 11 September 2009.

²⁸ With respect to the Panel's practice to invite the SRSG to comment also on the merits of the complaint, see *supra*, paragraph 36.

²⁹ HRAP Rules of Procedure, Rule 39*bis*, inserted on 12 November 2009.

³⁰ See generally, HRAP Rules of Procedure, Rule 30.

³¹ A member who dissents or concurs can join an opinion to the majority's opinion. Until now, this has not yet happened.

³² HRAP Rules of Procedure, Rule 42.

³³ Although the Panel may receive a request for reconsideration and, depending on the nature of the request, may deal with it in a new decision on admissibility.

³⁴ HRAP Rules of Procedure, Rule 34.

³⁵ UNMIK Regulation No. 2006/12, Section 11.3.

legal officer will then prepare the opinion on the merits of the complaint.³⁶ If the Panel finds that UNMIK is responsible for a violation of the complainant's human rights, it may make recommendations to UNMIK, including, where appropriate, recommendations on the reparation to be offered.

59. Once the Panel adopts the opinion, it is signed by the Presiding Member and the Executive Officer³⁷ and the Secretariat follows the same distribution and publication procedure as for decisions, described in paragraph 55, *supra*.

60. After the Panel adopts its opinion, the SRSG retains exclusive authority to decide whether to act on the findings and recommendations of the Panel, pursuant to Section 17 of UNMIK Regulation No. 2006/12. The decisions of the SRSG to that effect must be published promptly in English, Albanian, and Serbian in a manner that ensures broad dissemination and accessibility.³⁸

5. Public Information Initiatives

61. Following UNMIK's general withdrawal from the exercise of executive functions in Kosovo in 2008³⁹, the Panel decided not to engage in any further large scale public outreach. As UNMIK decreases its responsibilities, fewer complaints are likely to be declared admissible and the Panel sought to avoid raising expectations of complainants by encouraging applicants to submit new complaints.

62. However, the Panel will commence with at least one public information campaign at the beginning of 2010, in light of Section 5 of UNMIK Administrative Direction No. 2009/1 which stipulates that the Panel will no longer be able to receive complaints later than 31 March 2010. Since this information is not widely known throughout the region, advertisements will be placed in regional newspapers (in *Danas* and *Politika* published in Belgrade in Serbian and in *Koha Ditore* published in Prishtinë/Priština in Albanian) to ensure the general public is aware of the deadline.

6. Caseload of the Panel and Statistics

6.1. Statistics

63. The Panel received a total of 351 complaints during the reporting period, raising the total number of complaints received by the Panel to 435, of which 406 are pending at various stages of the proceedings. At the end of 2009, 176 cases were pending translation.

64. During the reporting period, the Panel rendered one partial opinion on the merits, 22 decisions on admissibility and/or striking the cases from the list. The Panel

³⁶ See generally, HRAP Rules of Procedure, Rule 36. If a Panel member dissents or concurs in part, he or she can prepare a dissenting or concurring opinion.

³⁷ HRAP Rules of Procedure, Rule 42.

³⁸ To date however, the SRSG has not published any decision on the only recommendations made thus far by the Panel in HRAP, *Canhasi*, Case No. 04/08, opinion of 12 November 2008.

³⁹ Following the Presidential Statement of the United Nations Security Council of 26 November 2008, S/PRST/2008/44, welcoming the continued engagement of the European Union in Kosovo.

declared two cases entirely admissible, nine cases admissible in part and eight cases entirely inadmissible. It also struck three cases from the list.

65. At the end of 2009, there were 406 cases pending before the Panel, with 21 of those cases awaiting an opinion on the merits⁴⁰ and the remaining 385 cases awaiting an initial decision on admissibility.

HRAP Caseload, Communications & Determinations 2006 to 2009					
Caseload	2006	2007	2008	2009	Total
Received	3	12	69	351	435
Closed	0	0	18	11	29
Pending	3	15	66	406	406

Communications	2006	2007	2008	2009	Total
Communicated to SRSG	N/A ⁴¹	-	30	71	101
Responses from SRSG	-	-	18	75	93
Pending Response from SRSG	-	-	12	8	8

Determinations: Type	2006	2007	2008	2009	Total
Total	-	-	32	23	55
Admissibility Decisions	-	-	28	22	50
Partial Admissibility Decisions	-	-	2	0	2
Opinions on the Merits	-	-	1	0	1
Partial Opinions on the Merits	-	-	0	1 ⁴²	1
Requests for Revision	-	-	1	0	1
Determinations: Finding	2006	2007	2008	2009	Total
Decisions: Entirely Admissible	-	-	11	2	13

⁴⁰ In cases for which there is a partial opinion on the merits, the case is still awaiting a final opinion on the merits. Also, following the promulgation of UNMIK Administrative Direction No. 2009/1, some cases currently awaiting an opinion on the merits require a second decision on admissibility.

⁴¹ The Panel was not appointed until January 2007 and did not have its first session until November 2007, hence the use of "not applicable" (N/A).

⁴² This refers to a partial opinion on the merits, in which the Panel determined a significant substantive issue, but adjourned a further examination of the merits to a later date; see *infra*, paragraph 94.

Decisions: Admissible in Part, Inadmissible in Part	-	-	2 ⁴³	9	11
Decisions: Entirely Inadmissible	-	-	17	8	25
Decisions: Strike off the List	-	-	0	3	3
Opinions: Violation	-	-	1	0	1
Opinions: No Violation	-	-	0	1 ⁴⁴	1
Requests for Revision: Refused	-	-	1	0	1

6.2. Trends in the Caseload and Issues of Note

66. Certain trends in the caseload of the Panel have remained whilst others have altered significantly from the last reporting period. Most complainants who specifically invoke a human rights instrument complain firstly under the European Convention on Human Rights. However, a large percentage of complaints received during the reporting period failed to specify which article or even which instrument they relied on, with the complainants only arguing that they wished to obtain “everything they are entitled to under international conventions”. The lack of specificity rarely presents a significant problem from the standpoint of identifying the framework under which to analyse the complaint. However, the lack of specificity rarely ends with the vague arguments under the applicable law and the Secretariat must almost always seek further factual information from the complainants.

67. In a shift from the last reporting period, the bulk of new cases received in 2009 focused on allegations of ineffective investigation into disappearances and murders that took place in the period preceding, during, or following the eruption of the violent conflict in Kosovo (1999), allegedly in violation of the right to life. The Panel also continued to receive cases alleging excessive length of duration of proceedings and the denial of access to a court in cases for damages filed against KFOR, UNMIK, the Provisional Institutions of Self-Government (PISG) of Kosovo and various Municipalities, allegedly in violation of the right to a fair trial, as well as other property-related cases.

68. In addition, one case filed in 2009 alleges a breach of the right to a fair trial due to the promulgation of UNMIK Administrative Direction 2009/1 and its effects on certain proceedings before the Panel itself. The Panel will take a decision on the admissibility of that case due to its potential impact on other pending cases early in 2010.

69. In *Ramadan Xhema*, Case No. 01/09, the Panel had to determine whether the service of the Housing and Property Claims Commission decision to the complainant was effective in order to determine when the six-month period began running. The case is of particular note in the context of Kosovo, due to the practice of listing

⁴³ The cases are actually two partial decisions on admissibility, HRAP, *Olga Lajović*, Case No. 09/08, and *Gani Emini*, Case no. 17/08

⁴⁴ Refers to the partial opinion on the merits referenced in footnote 42, *supra*.

disputed or former addresses as one's correspondence address, even in official correspondence. The Panel held that there was regular delivery at the address supplied by the complainant regardless of whether or not he was present at the moment of delivery. It is the responsibility of parties to any proceedings to ensure that they give accurate contact information to the tribunal or authority in question and to update that information.

70. Also, the Panel continued to process the two most high profile cases in 2009, *Kadri Balaj and others*, Case no. 04/07, concerning the killing of two protesters and the serious wounding of others during a protest in Prishtinë/Priština in February 2007⁴⁵, and *N.M. and others*, Case no. 26/08, concerning alleged lead poisoning in camps occupied by displaced Roma, Ashkali and Egyptian persons in the Mitrovica/Mitrovicë region of Kosovo⁴⁶.

71. Concerning the *Kadri Balaj and others* case, the Panel intended to hold a public hearing in early 2009 following its 2008 decision declaring the case admissible. However, the hearing was initially postponed due to security concerns raised by UNMIK. Following that, a closed hearing was held on 19 March 2009 in which the attorneys for the complainants indicated that they would refuse to participate in a closed hearing, effectively resulting in the indefinite postponement of the hearing in that case. Following the adoption of UNMIK Administrative Direction No. 2009/1, UNMIK requested that the Panel review the admissibility of the case anew. The Panel is likely to issue a new determination on the admissibility of the case following the appointment of the third Panel member.

72. The Panel declared the case of *N.M. and others*, filed on behalf of a total of 143 Roma/Ashkali/Egyptian complainants admissible in part on 5 June 2009. The aspects of the complaint declared inadmissible mostly deal with certain individuals who do not meet the admissibility criteria because they were not "victims" and complaints related to conditions in the camps for those persons who were no longer resident in the camps as of six months prior to the filing of the complaint.⁴⁷ The Panel found the remaining aspects of the complaint admissible, which raise issues under the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, and the Convention on the Rights of the Child.

73. Following the adoption of UNMIK Administrative Direction No. 2009/1, UNMIK requested that the Panel review the admissibility of the case anew. The Panel is likely to issue a new determination on the admissibility of the case following the appointment of the third Panel member.

74. In addition to the categories of cases mentioned above, the Panel continued to process cases concerning the following:

- Allegations of a violation of the right to a fair trial (Article 6 § 1 ECHR), right to respect for private and family life (Article 8 § 1 ECHR), the right to protection of

⁴⁵ See HRAP, *Balaj and others*, Case No. 04/07, decision of 6 June 2008.

⁴⁶ See HRAP, *N.M. and others*, Case No. 26/08, decision of 5 June 2009.

⁴⁷ For more information, see *infra*, paragraphs 80-82.

property (Article 1 of Protocol No. 1) as well as the right to an effective remedy (Article 13 ECHR), in relation to decisions made by the Housing and Property Directorate and its Housing and Property Claims Commission, and the Kosovo Property Agency and its Property Claims Commission concerning ownership and occupancy.

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

6.3. Opinions and Decisions of the Panel by Subject Matter

75. Hereunder are a number of cases listed according to the subject matter:

Murder/Missing Person Case Related to the Conflict

Right to Life – Prohibition Torture, Inhuman or Degrading Treatment

- *Snežana Zdravković* 46/08 (decision of 17 April 2009) Admissible

Complaint of Roma/Ashkali/Egyptian Internally Displaced Persons in the Northern Part of Kosovo

See the 5 June 2009 decision for the full description of human rights issues involved.

- *N.M. and Others*, 26/08 (decision of 5 June 2009) Admissible in Part

Confiscation of Equipment by Independent Media Commission

Right to Peaceful Enjoyment of Possessions

- *Nexhmedin Spahiu* 02/08 (partial opinion of 20 March 2009) Rejected SRSG's Objection, Adjourned for Further Examination of the Merits

Employment Dispute

Right to Fair Trial

- *Gani Emini* 17/08 (decision of 17 April 2009) Admissible

Housing and Property Claims Commission Cases

Right to Fair Trial – Right to an Effective Remedy – Right to Peaceful Enjoyment of Possessions – Prohibition of Discrimination

- *D.K.* 53/08 (decision of 27 February 2009) Inadmissible
- *Ramadan Demirović* 57/08 (decision of 17 April 2009) Inadmissible
- *Ilija Trajković* 35/08 (decision of 17 April 2009) Inadmissible
- *Zlatana Jovanović* 52/08 (decision of 23 May 2009) Inadmissible
- *Lumturije Voca* 51/08 (decision of 23 May 2009) Inadmissible
- *M.V.* 19/08 (decision of 5 June 2009) Inadmissible
- *Ramadan Xhema* 01/09 (decision of 5 June 2009) Inadmissible.

The “14,000” Cases⁴⁸

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

- *Petko Milogorić* 38/08 (decision of 22 May 2009) Admissible in Part
- *Dragan Gojković* 61/08 (decision of 4 June 2008) Admissible in Part
- *Slavko Bogicević* 69/08 (decision of 6 June 2009) Admissible in Part
- *Danilo Čukić* 63/08 (decision of 6 June 2009) Admissible in Part
- *Milisav Zivaljević* 58/08 (decision of 6 June 2009) Admissible in Part
- *V.Z.* 25/08 (decision of 15 July 2009) Admissible in Part

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

Right to Fair Trial – Right to Peaceful Enjoyment of Possessions – Right to Effective Remedy – Right to be Free From Discrimination

- *Rodoljub Todorović* 33/08 (decision of 17 April 2009) Admissible in Part
- *Kabaš Krasnići* 20/08 (decision of 12 September 2009) Admissible in Part
- *Qaush Smajlaj* 23/08 (decision of 12 September 2009) Inadmissible

7. Jurisprudence of the Panel

76. The Panel continued to develop its jurisprudence during the first half of 2009. Following the promulgation of UNMIK Administrative Direction No. 2009/1, the Panel has been unable to issue determinations and as such, the development of the Panel’s jurisprudence has been on hold until the arrival of the third Panel member.

7.1. Admissibility Issues

7.1.1. Jurisdiction of the Panel

77. In a case which alleged that UNMIK Regulation No. 2006/12 itself was discriminatory as applied to IDPs who did not live in Kosovo insofar as it subjected them to the six month rule, the Panel held that it was within the SRSG’s discretion to determine the regulatory scheme for the complaints system against UNMIK. The

⁴⁸ Referring to thousands of cases filed against UNMIK, KFOR, the PISG, and various Municipalities in 2004 for which proceedings were suspended following a letter from UNMIK to the various courts of Kosovo. At the time the letter was sent, it referred to “over 14,000 cases” submitted. In the end, the figure was closer to 17,000 – 18,000 cases.

Panels' authority to examine acts of UNMIK for human rights compatibility do not extend to allow the Panel to examine the compatibility of its own legal foundation with human rights instruments. See HRAP, *Ramadan Demirović*, Case no. 57/08.

7.1.2. Admissibility *ratione temporis*

78. In cases where a person dies in conditions that are dangerous to human life and the complainant alleges that no investigation was launched by authorities before the temporal jurisdiction of the Panel, the complaint concerning the substantive limb of Article 2 (i.e., the actual death) will be time-barred *ratione temporis*. However, allegations of a failure to conduct an effective investigation into such deaths may be considered potential ongoing violations and can enter the Panel's temporal jurisdiction. See HRAP, *Snežana Zdravković*, Case No. 46/08 and HRAP, *N.M. and Others*, Case No. 26/08.

79. In general, when a complainant argues that an alleged violation has been continuing on a regular basis over a number of years, and constitutes an ongoing pattern of conduct and accumulated circumstances, this can give rise to a continuing violation of one's human rights. In the context of the case of *N.M. and Others*, many aspects of the complaint are based on the cumulative effects of prolonged exposure to lead, which the Panel held may give rise to a continuing violation, depending on the nature of the right invoked and the factual circumstances of the individual complainant. See HRAP, *N.M. and Others*, Case No. 26/08.

7.1.3. Admissibility *ratione personae*

80. In the case of *N.M. and Others*, two persons listed in the complaint died before the complaint was filed. The Panel held that deceased persons can not be "victims". Such complaints will be declared inadmissible *ratione personae*. This rule is easiest to understand in the following example. A claim can not be filed by a deceased person arguing that his or her property has been unreasonably taken by a governmental authority. The heir or the current owner to the property is the proper person to bring such a suit.

81. This differs from a situation where it was not the deceased person filing a complaint, but the families of deceased persons complaining about the death and lack of investigation into that death. In cases where a person complains of the death of a close family member, the Panel considers that the complainant acts as the person who is affected by the death, and not the decedent's representative. See HRAP, *N.M. and Others*, Case No. 26/08.

82. Furthermore, victim status implies a degree of involuntary suffering or involuntary exposure to the human rights violation in issue. Reasonable persons are expected to take preventative measures to avoid being subjected to human rights violations where possible and where they are aware of the likely risks. If they choose to place themselves in a situation of some quantifiable risk, they must be considered responsible for their own actions, even if they are well intentioned. In the case of *N.M. and Others*, the group of complainants included three Nongovernmental Organization (NGO) staff members who came to the IDP camps to work. The Panel noted that the NGO workers were aware of the potential risks of the alleged lead

contamination in the camps and in fact were involved in raising awareness of that very issue. As such, the Panel considered that the NGO workers voluntarily assumed the risks of working in the camps and could not be considered victims. Therefore, the Panel declared the complaints of the three NGO workers inadmissible *ratione personae*. See HRAP, *N.M. and Others*, Case No. 26/08.

7.1.4. Six-Month Rule

83. In cases where a person dies in conditions that are dangerous to human life and the complainant alleges that no investigation was launched by authorities, and that more than six months have passed between the time of the actual death and the filing of the complaint before the Panel, the complaint concerning the substantive limb of Article 2 of the ECHR (i.e., the actual death) will not be admissible having regard to the six-month rule. However, allegations of a failure to conduct an effective investigation into such deaths may be considered potential continuing violations and may not in fact run afoul of the six-month rule. See HRAP, *Snežana Zdravković*, Case No. 46/08 and HRAP, *N.M. and Others*, Case No. 26/08.

84. A continuing situation lasts until an end is put to it. However, in certain instances, it can also end when the complainant is no longer adversely affected by the situation. In terms of the six-month time limit therefore, the critical date for calculation purposes could be the end of the situation or the end of exposure to a situation for a particular person. In certain circumstances the situation could continue even after the exposure ends, depending on the nature of the violation. See HRAP, *N.M. and Others*, Case No. 26/08.

85. In a similar vein, the Panel held that the denial of the right to access a court can be a continuing violation. The Panel determined that the same is true for cases of an alleged lack of an effective remedy, which could itself rise to the level of a continuing violation until and unless such a remedy is provided. Therefore, neither aspect ran afoul of the six-month rule in the case of HRAP, *N.M. and Others*, Case No. 26/08.

86. The Panel had to answer the question of whether the six-month rule should be tolled in cases because of an alleged lack of public knowledge of the Panel's existence and because of the lag in time between the promulgation of UNMIK Regulation No. 2006/12 and the first session of the Panel in November 2007. The Panel held that a lack of knowledge of the existence of the Panel alone does not constitute a "special circumstance" that would require the Panel to suspend or interrupt the six-month period from the final decision or act that gives rise to the alleged human rights violation. See HRAP, *Ramadan Demirović*, Case no. 57/08.

87. In another case, the Panel had to determine two issues related to effective service of documents to determine whether a complaint was submitted within six months of the final decision in that case. According to the Panel, the six-month period does not necessarily begin to run from the actual date of the events giving rise to a human rights complaint, or from the date which the relevant authorities took their final decision. In fairness to the parties, the six-month limit only begins to run from the date that the complainant knew or ought to have known of the facts giving rise to the alleged human rights violation or a final decision. See HRAP, *Ramadan Xhema*, Case No. 01/09. See also paragraph 69, *supra*.

7.1.5. Exhaustion of Available Remedies

88. In missing person cases, murder cases, and cases alleging torture or cruel, inhuman or degrading treatment, the SRSG often argues that because the investigation is ongoing the complainants have failed to exhaust their available remedies and should wait for the investigation to conclude. However, the Panel found that, in cases where the disappearance or murder occurred more than eight years before the complaint was introduced, the issue of exhaustion should be joined to the merits of the complaint for joint examination. See HRAP, *Snežana Zdravković*, Case No. 46/08.

89. In HRAP, *Slavko Bogicević*, Case No. 69/08, the complainant alleged that the UNMIK Department of Justice (DOJ) order to stay the proceedings in cases filed in 2004 allegedly inhibited the complainant from receiving a final determination in his case for damages to his property. UNMIK argued that the case was inadmissible as the court procedure was ongoing and the complainant therefore failed to exhaust domestic remedies. However, UNMIK's submission did not point to any remedy available to the complainant to challenge the stay of proceedings or the length of proceedings. The Panel found that the complaint raised under Article 1 of Protocol 1 to the ECHR, protection of property, was inadmissible for failure to exhaust domestic remedies, as the court procedure concerning damages to the property was ongoing. However, the Panel also found that alleged interference with the complainant's access to a court (due to the DOJ order to stay proceedings) as well as the length of proceedings (lasting from 24 September 2004 to the present) could give rise to a possible ongoing violation of Article 6 § 1 of the ECHR, as well as the right to an effective remedy under Article 13 of the ECHR. See also HRAP, *Danilo Cukić*, Case No. 63/08, HRAP, *Milisav Zivaljević*, Case No. 58/08, and HRAP, *V.Z.*, Case No. 25/08.

7.1.6. Objection Concerning the Panel's Characterization in Law of the Facts of a Case

90. The SRSG objected to the Panel's characterization of the facts submitted by the applicant in the *Zdravković* case to examine the complaint under Article 3 of the ECHR, right to be free from torture, inhuman or degrading treatment, and that the complainant could not argue their case under other Articles of the various conventions after its initial submission to the Panel.

91. The SRSG claimed that the Panel's rules of procedure require the complaint to set out a succinct statement of the alleged violation of the human rights instruments under which they are complaining. The SRSG specifically argued that "all alleged violations of the European Convention on Human Rights must be made by the applicant at the time of the application. A later addition of alleged violations of the [ECHR] is not provided for under [UNMIK Regulation No. 2006/12] and Procedural Rules, which only allow the Panel to request 'factual information and comments during the review of the complaint.'"

92. The Panel however, noted that the original complaint contained sufficient factual information and a sufficient statement of the alleged violation giving rise to a complaint under Article 3 of the ECHR. Furthermore, the Panel concluded that

following from the Panel's jurisdiction to review the circumstances complained of in light of the various human rights instruments mentioned in Section 1.2 of UNMIK Regulation No. 2006/12, the Panel is free to attribute to the facts of the case a different characterization in law from that given by the complainant. The Panel further concluded that the Panel must also take into account additional information submitted to it in the course of the examination of the complaint when characterizing the complaint. The Panel therefore rejected the objection made by the SRSG. See HRAP, *Snežana Zdravković*, Case No. 46/08.

7.1.7. Strike Out

93. The Panel decided to strike cases off the list when the complainants either failed to allege a human rights violation or ceased pursuing their complaints after the Panel gave them multiple opportunities to substantiate their claims. See HRAP, *Nexhmedin Llumica*, Case no. 18/08, HRAP, *Sefedin Alija*, Case No. 21/08 and HRAP, *Servete Kusari*, Case No. 22/08.

7.2. Substantive Issues

7.2.1. Responsibility of UNMIK for Acts or Omissions of the Provisional Institutions of Self-Government of Kosovo

94. In the case of HRAP, *Nexhmedin Spahiu*, Case No. 02/08, the Panel held that UNMIK is responsible for any act or omission imputable to the PISG, at least whenever the actions of the PISG are inconsistent with the Constitutional Framework set out in UNMIK Regulation No. 2001/9.

7.2.2. Right to a Fair Trial – Alleged Procedural and Factual Errors

95. The Panel held that it is not a “fourth instance” tribunal and as such it will not question the determinations of the relevant courts and tribunals unless there is evidence that they acted in an arbitrary or unreasonable manner in deciding the issues in dispute. See HRAP, *Kabaš Krasnići*, Case No. 20/08.

7.2.3. Right to Life

96. When Article 2 of the ECHR, the right to life, is invoked, the Panel will subject such allegations to the most careful scrutiny. The Panel found that the alleged failure of the authorities to conduct an effective investigation into the disappearance or death of a person who disappeared under life threatening circumstances can constitute an ongoing violation of Article 2 of the ECHR, even when it has been established that the killing, death, or disappearance was not caused by an agent of the government. See HRAP, *Snežana Zdravković*, Case No. 46/08 and HRAP, *N.M. and Others*, Case No. 26/08.

7.2.4. Torture, inhuman or degrading treatment or punishment

97. The Panel held that the close relatives of a victim may themselves be a victim of Article 3 of the ECHR depending on the reactions and attitude of the relevant

authorities when the situation is brought to their attention. See HRAP, *Snežana Zdravković*, Case No. 46/08.

7.2.5. Right to an Effective Remedy

98. Complainants alleged that they were unable to bring their complaint to any body that had enforcement power over UNMIK due to UNMIK's legal immunity and the incoherence and uncertainty of the legal system in Kosovo, in violation of their right to an effective remedy under Article 13 of the ECHR. The Panel held that the right to an effective remedy requires the authorities to make available such remedies, which enable a complainant to raise the human rights issues and to have them considered by an independent authority with a sufficiently broad power of review. See HRAP, *N.M. and Others*, Case No. 26/08.

7.2.6. Rights to Adequate Housing, Health Care and Standard of Living

99. The Panel was also confronted with the rights to adequate housing, health care and standard of living under a wide range of human rights instruments, including Article 25 (1) of the UDHR, Article 11 of the ICESCR (standard of living, food, clothing and housing), Article 12 of the ICESCR (health), and Article 5 of the CERD (housing), Article 12 of the CEDAW (access to health care and nutrition, especially during pregnancy), Article 14 of the CEDAW (adequate standards of living, including housing and sanitation), Article 24 of the CRC (food, water) and Article 27 of the CRC (standard of living, nutrition, clothing and housing).

100. In the case of *N.M. and Others*, the complainants contended that through UNMIK's failure to relocate the complainants from the allegedly lead-contaminated sites and the failure to take positive steps to improve the health, housing and living conditions of the IDPs under its care, UNMIK breached minimum human rights standards in relation to housing, health and adequate standards of living. The Panel found that such allegations were not manifestly ill-founded given the possible existence of positive and ongoing obligations by the respondent in relation to the rights to housing, health and an adequate standard of living. The Panel also held that the public authorities may, in certain situations, have a responsibility in relation to subsequent living conditions of complainants which are a result of repercussions of previous acts or omissions by the authorities. See HRAP, *N.M. and Others*, Case No. 26/08.

7.2.7. Prohibition of Discrimination

101. In the case of *N.M. and Others*, the complainants state that the Roma/Ashkali/Egyptian community is subject to direct and institutional discrimination and that UNMIK's failure to remove them from the IDP camps allegedly contaminated with lead is a further manifestation of this entrenched discrimination, particularly in circumstances where other IDP communities have allegedly been treated more favourably and have been moved more promptly from dangerous locations. They allege that a pattern of discrimination has manifested itself through UNMIK's acts or omissions in failing to relocate them to a safe environment and to provide them with adequate information about the health risks they face and to take steps to improve living standards over a number of years. The Panel found that

these complaints alleging direct or institutional discrimination were not manifestly ill-founded and had to be examined on the merits. See HRAP, *N.M. and Others*, Case No. 26/08.

7.2.8. Prohibition of Discrimination against Women

102. In *N.M. and Others*, the complainants alleged breaches of specific provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), including Article 2 (condemnation of discrimination against women), Article 3 (obligation to take action to guarantee equality), Article 5 (obligation to take measures regarding family education in the best interests of children) and Article 12 (obligation to take measures to eliminate discrimination against women in the field of health care and to ensure appropriate services in connection with pregnancy including free services and adequate nutrition).

103. The complainants alleged that they were subject to grave danger to their lives and health from the alleged lead contamination in the camps and the generally abhorrent camp conditions. This continued from their initial placement, their long term stay in the camps and the failure to remove the complainants from the camps. The alleged combination of a lack of adequate healthcare, medical information, and family education were particularly serious for pregnant women on account of their increased vulnerability and that of their unborn children. The Panel found that such allegations were not manifestly ill-founded and that part of the complaint should proceed to an examination on the merits of the case. See HRAP, *N.M. and Others*, Case No. 26/08.

7.2.9. Rights of the Child

104. The complainants in *N.M. and Others* allege that UNMIK violated Article 2 of the CRC (freedom from discrimination), on account of alleged ethnic and gender discrimination, Article 3 of the CRC (best interests of the child) for the alleged failure to take into account the best interests of the child, Article 5 of the CRC (rights of the parents) for the alleged failure to respect rights of the parents for allegedly failing to report the results of the blood tests or give correct information. Moreover, the complainants allege that UNMIK violated Article 6 of the CRC (right to life, survival and development) for those children who have died or have allegedly been denied their right to survive or develop as a consequence of the permanent mental deficiencies of children born with lead poisoning and through the denial of medical treatment.

105. The complainants also allege that UNMIK failed to create conditions in which a mentally or physically disabled child can enjoy a full and decent life with special care in violation of Article 23 of the CRC (rights of mentally or physically disabled children). They further allege that UNMIK has violated Article 24 of the CRC (right to highest attainable standard of health) through stopping the provision of nutritious food and medical care, failing to take into account the risks of environmental pollution and through failing to provide adequate or even any information. Finally, the complainants contend a violation of Article 27 of the CRC (right to adequate standard of living, nutrition, clothing and housing), Article 37 of the CRC (prohibition of cruel, inhuman or degrading treatment), Article 16 of the CRC (protection from attacks on

or interference with privacy, family life and home), and Article 19 of the CRC (protection of children from physical or mental violence, injury or abuse) due to the general conditions in the camps.

106. The Panel held that the allegations of violations of the above-mentioned rights were not manifestly ill-founded and required an examination of the merits of each complaint. See HRAP, *N.M. and Others*, Case No. 26/08.

7.2.10. Restrictions on the Right of Access to a Court

107. In HRAP, *Qaush Smajlaj*, Case No. 23/08, the complainant alleged that the requirement that all documents and pleadings submitted to the Special Chamber be translated into English contained in Section 22.7 of UNMIK Administrative Direction No. 2003/13 on the Transformation of the Right of Use of Socially-Owned Immovable Property violated his right of access to a court under Article 6 §1 of the ECHR. The Panel noted that a restriction affecting the right of access to a court, such as a translation requirement or a filing fee, is incompatible with Article 6 § 1 of the ECHR unless it pursues a legitimate aim and there is a reasonably proportionate relationship between the means employed and the legitimate aim sought to be achieved. Such a fee, even when reasonable, may still constitute a violation if there is no or inadequate provision for fee waiver for claimants who can not otherwise pay those costs. The Panel held that the translation requirement with respect to proceedings before the Special Chamber was related to the ability of international judges in the Special Chamber to administer justice in a timely manner. The Panel noted that the unique context of Kosovo required international judges, whose working language was English, to ensure the fair administration of justice in certain areas. Having found that the aim of the restriction was legitimate, the Panel found that the requirement of applicants who could afford to have their legal documents translated was reasonably proportionate to that aim. Finally, given that the Administrative Direction containing the provisions on fees provided for costs to be waived for those parties that submitted proof of financial hardship, the Panel concluded that the complainant's right of access to the court had not been violated. The Panel then rejected the claim as manifestly ill-founded. See HRAP, *Qaush Smajlaj*, Case No. 23/08.

7.2.11. Language Discrimination

108. In the *Smajlaj* case, the complainant alleged that the requirement to provide English translations of documents drafted in Albanian or Serbian allegedly discriminated against Albanian and Serbian speakers in favour of English speakers. However, the Panel noted that UNMIK Regulation No. 2000/46 on the Use of Language in Court Proceedings in Which an International Judge or International Prosecutor Participates enabled parties to address the court in their own language. Regarding written submissions to the Special Chamber, the Panel noted that it had already found such restrictions regarding access to be reasonably related to a legitimate aim in the context of the international administration of Kosovo and provided adequate safeguards for waiver for persons who could not afford translations. Thus, the Panel found that this aspect of the complaint was manifestly ill-founded. See HRAP, *Qaush Smajlaj*, Case No. 23/08.

7.2.12. Right to Appeal in Civil Proceedings

109. The Panel found that UNMIK Regulation No. 2008/4 of 5 February 2008 amending UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, creating a right to appeal against the judgment of the Special Chamber, had not yet entered into force at either the time of the judgment or at the time the appeal was actually filed. UNMIK had postponed the entry into force of that Regulation numerous times pending the reconfiguration of UNMIK. Since the right to an appeal did not exist under the law at the relevant time, the Panel held that the complainant was not denied such a right. The Panel also noted that in civil matters, there is no recognized right to an appeal (as exists in criminal matters). See HRAP, *Kabaš Krasnići*, Case No. 20/08.

7.2.13. Right to Peaceful Enjoyment of Possessions

110. Regarding the complainant's assertions under Article 1 of Protocol No. 1 to the ECHR, the Panel noted that the protection under that provision only applies to existing possessions. While in certain circumstances having "a legitimate expectation" of obtaining an asset may enjoy the protection of Article 1 of Protocol No. 1 to the ECHR, it does not apply to situations in which a dispute exists as to the correct application and interpretation of the domestic law and where the complainant's submissions are subsequently rejected by the courts. See HRAP, *Kabaš Krasnići*, Case No. 20/08.

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: Human Rights Advisory Panel, Rules of Procedure, Rule *29bis* (adopted on 11 September) and Rule *39bis* (adopted on 30 November 2009)

Annex D: Human Rights Advisory Panel Case Flow Chart

Annex A: UNMIK Regulation No. 2006/12

UNITED NATIONS
United Nations Interim
Administration Mission in
Kosovo



UNMIK

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

UNMIK/REG/2006/12
23 March 2006

REGULATION NO. 2006/12

ON THE ESTABLISHMENT OF THE HUMAN RIGHTS ADVISORY PANEL

The Special Representative of the Secretary-General,

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

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

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

Hereby promulgates the following Regulation:

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

Section 1

Establishment of the Human Rights Advisory Panel

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

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

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

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

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

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

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

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

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

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

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

Section 2 Temporal and Territorial Jurisdiction

The Advisory Panel shall have jurisdiction over the whole territory of Kosovo and over complaints relating to alleged violations of human rights that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights.

Section 3 Admissibility Criteria

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

3.2 The Advisory Panel shall not deal with any complaint that

(a) Is anonymous; or

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

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

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

Section 4 Seat and Composition

4.1 The Advisory Panel shall have its seat in Pristina.

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

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

Section 5 Appointment of the Members

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

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

Section 6 Oath or Solemn Declaration

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

"I do hereby solemnly declare that:

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

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

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.”

Section 7
Immunity and Inviolability

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

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

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

Section 8
Financial and Human Resources

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

Section 9
Secretariat

A full-time secretariat shall service the Advisory Panel.

CHAPTER 3: Procedure before the Human Rights Advisory Panel

Section 10
Submission of complaints and *Ex Officio* Representatives

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

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

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

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

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

Section 11 Written Submissions

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

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

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

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

Section 12 Confidentiality of Communications

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

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

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

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

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

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

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

Section 14
Oral hearings

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

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

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

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

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

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

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

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

Section 17
Findings and Recommendations of the Advisory Panel

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

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

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

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

Section 18
Rules of Procedure

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

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

CHAPTER 4: Final Provisions

Section 19
Implementation

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

Section 20
Applicable Law

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

Section 21
Entry into force

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

Søren Jessen-Petersen
Special Representative of the Secretary-General

Annex B: UNMIK Administrative Direction No. 2009/1

UNITED NATIONS

United Nations Interim
Administration Mission in
Kosovo



UNMIK

NATIONS UNIES

Mission d'Administration
Intérimaire des Nations
Unies au
Kosovo

UNMIK/DIR/2009/1
17 October 2009

ADMINISTRATIVE DIRECTION NO. 2009/1

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

The Special Representative of the Secretary-General,

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

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

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

Hereby promulgates the following Administrative Direction:

Section 1
Public Hearings

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

1.2 During Public hearings, complainants or their representative shall be permitted to make a statement summarizing the alleged human rights violation, as contained in the written submissions to the Advisory Panel. During public hearings, the Advisory Panel shall ask such questions of the parties, or their representatives, which clarify the

factual basis of the complaint and are necessary for the Advisory Panel to fully assess the human rights allegations before it.

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

Section 2 Issues of Admissibility

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

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

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

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

Section 3 Appointment and Resignation of Panel Members

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

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

Section 4
Publications of the Advisory Panel

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

Section 5
Cut-off Date for Submission of Complaints

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

Section 6
Entry into Force

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

Lamberto Zannier
Special Representative of the Secretary-General

Annex C: Human Rights Advisory Panel, Rules of Procedure, Rule 29bis and Rule 39bis

Rule 29bis (adopted on 11 September)

Rule 29bis. Admissibility decision without communication of the complaint to UNMIK

The Panel may also at once declare that the complaint is admissible, where the complaint raises questions which are substantially the same as those that have been raised in other complaints, which have already been declared admissible by the Panel, and where no new admissibility issue arises.

Rule 39bis (adopted on 30 November 2009)

Rule 39bis. Requests for restrictions on disclosure of evidence

1. Any of the parties may request the Panel not to disclose to the other party in the proceedings evidence submitted by it, in order to safeguard an important public interest or to preserve the fundamental rights of the complainant or of any other person concerned. Any such request shall include reasons and specify whether it is requested that the disclosure of all or part of the information submitted is restricted. The Panel shall decide on the request on an *ex parte* basis.
2. If the Panel grants the request, it shall inform the other party of its decision, and act accordingly. To the extent that it will not jeopardise the confidential character of the information received, the Panel shall indicate the nature of the evidence received in confidence. It will be possible for the Panel to base its determinations on evidence received in confidence.
3. If the Panel does not grant the request, or if it grants it only partially, it shall inform the requesting party of its decision, and give it an opportunity to reconsider the issue of submission of the evidence to the Panel.

Annex D: The Human Rights Advisory Panel Case Flow Chart

