



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

UNMIK HQ Prishtine/Priština, Kosovo | E-mail: [hrap-unmik@un.org](mailto:hrap-unmik@un.org) | Tel: +381 (0)38 504-604, ext. 5182

## **Annual Report 2015/16**



## Foreword

This is the eighth and the last annual report of the Human Rights Advisory Panel. It covers a longer period than reports from preceding years; from 1 January 2015 through 31 May 2016, the date when the Panel adopted its final opinion, finishing all of the cases on its docket.

During this period, the Panel issued a number of important opinions in cases similar in nature to the type of cases that have made up a sizable portion of the Panel's workload over the previous several years. These cases concerned the alleged lack of adequate criminal investigations in relation to disappearances, abductions and killings, pursuant to the procedural obligations arising under Article 2 of the European Convention on Human Rights (ECHR) and alleged violations of Article 3 of the ECHR with respect to the inhuman and degrading treatment of family members and other close relatives of victims.

Among these cases, attention should be paid to a few particular opinions, as they introduced novel issues that had not been previously discussed in the Panel's jurisprudence: *S.M.*, concerning an assault on the complainant in her family home in Bellopole/Belo Polje village in 26 June 1999 that included blindfolding her and tying her to a chair to listen while three men raped and killed her mentally and physically challenged daughter; *Kostić and Others*, concerning abductions taken place during an armed assault by the KLA on the villages of Opterusa and Retimlje including the complainants deprivation of liberty for four days; and *Milenković*, in which UNMIK Police delayed for 15 years the return of the remains of the complainant's brother, who disappeared in November 1999 and was killed.

The Panel has been made aware that there are significantly more families that wish to submit similar complaints to HRAP concerning UNMIK's alleged violations of Articles 2 and 3 of the ECHR, but these families remain barred by UNMIK's unexpected promulgation of Administrative Direction 2009/01 of 17 October 2009, which arbitrarily set 31 March 2010 as the cut-off date for the Panel's temporal jurisdiction to accept complaints.

During the reporting period, the Panel also finished cases related to other situations, for which special attention should be paid to two opinions. The first, *Balaj and others*, concerns the use of excessive force by UNMIK Police during a crowd control operation in February 2007, which resulted in the deaths and serious bodily injuries of several victims. The second, *N.M. and Others*, concerns allegations related to lead poisoning and other health problems on account of UNMIK placing members of the RAE community in contaminated camps in Northern Kosovo for many years.

As in preceding years, it must be emphasized that review by the Panel of all of the cases, many of which were extremely complex, would not have been possible without the lawyers and administrative personnel which make up the Panel's Secretariat, on whose extensive professionalism the Panel was always able to count on.

Also, as in previous annual reports, I must highlight again with deep regret the general structural problem that exists, namely the lack of implementation of the Panel's opinions, especially with regard to UNMIK paying financial compensation to the complainants, as well as the lack of

significant progress of EULEX or Kosovo law enforcement institutions' continuing investigations regarding the Panel's cases related to abductions, disappearances and killings. The hope remains that at least some of these cases will find their way to the docket of the special tribunal being created by the international community and Kosovo authorities - the Kosovo Relocated Specialist Judicial Institution (KSJI) - whose jurisdiction includes "serious crimes allegedly committed in 1999-2000 by members of the Kosovo Liberation Army (KLA) against ethnic minorities and political opponents."

Finally, the Panel is about to publish its final report, which will cover the entire term of its activity and legacy. It will also include analyses, reflections and conclusions for the international community with the goal of making recommendations about how such a Panel could perform more effectively, should such a Panel be created by the international community in the future. However one qualifies the success of this Panel, it has definitely been an important experiment in the domain of human rights accountability of international organisations or institutions.

Marek Nowicki

Presiding member

Human Rights Advisory Panel

June 2016

## Table of Contents

<b>1. Introduction</b> .....	1
<b>2. Composition of the Panel</b> .....	2
<b>2.1. Panel Members</b> .....	2
<b>2.2. Secretariat Staff</b> .....	4
<b>3. Media and NGO Coverage of HRAP</b> .....	6
<b>4. Caseload of the Panel</b> .....	8
<b>4.1. Statistics</b> .....	8
<b>4.2. Selected Opinions of the Panel by Subject Matter</b> .....	8
<b>5. Jurisprudence of the Panel</b> .....	9
<b>5.1. Right to Life - Right to an Effective Investigation - Right to be Free from Inhuman and Degrading Treatment – Right to Peaceful Assembly – Article 2 of the ECHR</b> .....	9
<b>5.2. Right to Life - Right to an Effective Investigation - Article 2 of the ECHR</b> .....	12
<b>5.3. Right to be Free from Inhuman and Degrading Treatment – Article 3 of the ECHR</b> .....	14
<b>5.4. Right to Life – Article 2 of the ECHR – Right to be Free from Inhuman and Degrading Treatment – Article 3 of the ECHR and Right to Family Life – Article 8 of the ECHR</b> .....	17
<b>5.5. Right to Life (procedural) – Right to be Free from Inhuman and Degrading Treatment – Right to and Effective Investigation – Rights under CEDAW</b> .....	18
<b>5.6. Right to Liberty – Right to Effective Investigation – Article 5 of the ECHR</b> .....	20
<b>5.7. Right to be Free from Inhuman and Degrading Treatment – Right to Social Security and an Adequate Standard of Living</b> .....	21
<b>5.8. Right to Social Security – Right to an Adequate Standard of Living – Right to Access to Court – Right to an Effective Remedy</b> .....	26
<b>6. Recommendations of the Panel</b> .....	27
<b>7. UNMIK’s Reactions to the Panel’s Recommendations</b> .....	29
<b>8. List of Annexes</b> .....	31
<b>Annex A: UNMIK Regulation No. 2006/12</b> .....	31
<b>Annex B: UNMIK Administrative Direction No. 2009/1</b> .....	38
<b>Annex C: HRAP Statistical Table</b> .....	41
<b>Annex D: List of HRAP Decisions and Opinions Issued in 2015 and 2016...</b>	42
<b>Annex E: Decisions and Opinions adopted by Year</b> .....	44
<b>Annex F: HRAP Closed Cases (Inadmissible, Strike Out and Opinion on the Merits) by Year</b> .....	44
<b>Annex G: Abbreviations and Acronyms</b> .....	45

## 1. Introduction

1. The Human Rights Advisory Panel (the Panel), established by UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 23 March 2006,<sup>1</sup> continued to examine complaints of alleged human rights violations committed by or attributable to the United Nations Interim Administration Mission in Kosovo (UNMIK) throughout its entire period of operation (2007 - 2016) in Prishtinë/Priština, Kosovo. The Panel remains the only mechanism that deals with human rights violations allegedly committed by or attributable to a United Nations field mission. Although the Panel cannot order compensation or specific relief, the Panel can determine whether UNMIK is responsible for a violation of human rights and, if so, it may make recommendations to the Special Representative of the Secretary-General (SRSG) concerning compensation or other specific relief.
2. Working at full Secretariat complement, the Panel was able to have a successful concluding period, processing a high volume of complaints, including the processing of complaints that raised the most complex human rights issues that had been submitted to the Panel. This annual report covers the period from 1 January 2015 to 31 May 2016, during which time the Panel conducted sixteen sessions, including having deliberations through electronic means. During this period, the Panel adopted 51 opinions on the merits (concerning 88 complaints) and rejected one request for revision of former determinations. Of them, 79 opinions were on the complaints related to missing and murdered persons (MMP).
3. The Panel has now completed its full docket of 527 registered complaints that it received from the Panel's inception and completed its case work on all pending cases.
4. In 2015, the Panel Members met with a delegation from the UN Working Group on Enforced and Involuntary Disappearances. Additionally in 2015, the Panel Members and the Secretariat liaised with the EULEX Human Rights Review Panel and discussed matters of mutual interest.
5. In 2015, the Panel and Secretariat continued to make extensive usage of other resources to collect information that it was unable to gather from the complainants or from the SRSG's submissions to the Panel. For example, the Panel was provided with invaluable information, including relevant investigative documents that had been heretofore unobtainable, from the State Prosecutor from the Office of the Chief State Prosecutor of Kosovo, the Chief Prosecutor from the Basic Prosecutor's Office in Prizren, UNMIK Police and Kosovo Police. The information received was communicated to all the parties to complaints before the Panel.
6. The Secretariat also liaised with individual complainants as well as organisations with ties to the cases, such as the Association of the Families of the Kidnapped and Murdered in Kosovo and Metohija to gather relevant information when required. In addition, the Secretariat regularly relied on the information published in the online databases of the

---

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

International Committee of the Red Cross (ICRC)<sup>2</sup> and the International Commission of Missing Persons (ICMP)<sup>3</sup>, as well as information referenced from the publications of the Humanitarian Law Centre.<sup>4</sup>

## 2. Composition of the Panel

### 2.1 Panel Members

7. The three Panel members, nominated by the President of the European Court of Human Rights and (re-)appointed by the SRSG in accordance with UNMIK Regulation No. 2006/12 on 1 January 2015 and 1 January 2016 were Mr Marek Nowicki (Poland), Ms Christine Chinkin (United Kingdom/Australia) and Ms Françoise Tulkens (Belgium)<sup>5</sup>. The Panel elected Mr Marek Nowicki as its Presiding Member in January 2008 and re-elected him as its Presiding Member in 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016<sup>6</sup>.
8. Biographical information is provided hereunder on the members of the Panel.
9. **Marek A. Nowicki** (January 2007- present) is a Polish citizen, a human rights lawyer, and a member of the Warsaw Bar Chamber since 1987.
10. Mr Nowicki was the United Nations-appointed International Ombudsperson in Kosovo from July 2000 to December 2005. He was a member of the European Commission of Human Rights in Strasbourg from March 1993 until 31 October 1999 and he was the Polish member of the European Union Network of Independent Experts on Fundamental Rights from March 2003 to September 2006. In 2005 he was nominated by the Committee of Ministers as one of three candidates for the post of the Commissioner for Human Rights of the Council of Europe.
11. Mr Nowicki was one of the “eminent lawyers” appointed by the Parliamentary Assembly of the Council of Europe to assess the legal and human rights situation in Moldova (1994) and Azerbaijan (1997). In 1996 and 1998, the Council of Europe asked him to serve as a human rights expert during the evaluation of the compatibility of the legal systems of Georgia and the Russian Federation with the standards of the European Convention on Human Rights. He served as a human rights expert for the European Commission for Democracy through Law (Venice Commission) and the Directorate General of Human Rights and Legal Affairs of the Council of Europe.
12. Mr Nowicki was a founding member of the Helsinki Foundation for Human Rights in Warsaw and its president from November 2003 until February 2008. Currently he chairs

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

<sup>3</sup> The ICMP database is available at: [http://www.ic-mp.org/fdmsweb/index.php?w=mp\\_details&l=en](http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en)

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

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

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

the Council of the Foundation. Mr Nowicki is the author of dozens of books and hundreds of articles on human rights published in Poland and abroad. He is a member of the Selection Committee of the Václav Havel Human Rights Prize of the Parliamentary Assembly of the Council of Europe.

13. **Christine Chinkin** (February 2010- present) a dual British/Australian citizen, Fellow of the British Academy, is Emeritus Professor of International Law at the London School of Economics and Director of the Centre on Women, Peace and Security at the LSE. She is also a William C. Cook Global Law Professor at the University of Michigan Law School. She is a member of the Bar of England and Wales and an academic member of Matrix Chambers. She has degrees in law from the Universities of London, Yale and Sydney and has previously held full-time academic posts at the Universities of Oxford, London, Sydney and Southampton, New York Law School and the National University of Singapore.
14. Ms Chinkin's main interests are in public international law, especially the law of treaties, human rights, with emphasis on the international protection of women's rights, and international organisations, and domestic and international dispute resolution. She is the author of many articles on issues of public international law and women's human rights, of Halsbury's Laws of Australia, Title on Foreign Relations (2nd edition 2001), Third Parties in International Law (1993), co-author of Dispute Resolution in Australia (2nd edition 2002), co-author of The Boundaries of International Law: A Feminist Analysis (2000), co-author of The Making of International Law (2007), co-editor of the United Nations Convention on the Elimination of all Forms of Discrimination against Women (2012) and Sovereignty, Statehood and State responsibility (2015). From 2004-2012, she was Director of Studies of the International Law Association. She is a member of the IBA Human Rights Institute. In April 2001 she was awarded the American Society of International Law's Certificate of Merit for 'outstanding contribution to scholarship' and in 2006 the Society's Goler T. Butcher Medal 'for outstanding contributions to the development or effective realization of international human rights law' (with H. Charlesworth).
15. Ms Chinkin has been a consultant on international law to the Asian Development Bank; on trafficking in women to the UN Office of the High Commissioner for Human Rights; on Peace Agreements and Gender to the UN Division for the Advancement of Women and UNIFEM. She was a Scientific Expert to an Ad Hoc Committee of the Council of Europe on the drafting of the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence. She was a Member of the Fact-Finding Mission to Beit Hanoun pursuant to United Nations Human Rights Council Resolution S 3/1, May 2008 and of the UN Fact-Finding Mission on the Gaza Conflict in 2009, and of the IBA HR Council Fact-Finding Mission to Malawi on the Rule of Law in January 2012.
16. **Françoise Tulkens** (September 2012- present) a Belgian citizen, has a Doctorate in Law, a Master's degree in Criminology and a Higher education teaching certificate (*agrégation de l'enseignement supérieur*) in Law.
17. She was also a researcher at the Max Planck Institute for Foreign and International Criminal Law (Freiburg-im-Breisgau, Germany). She was a Professor at the University of Louvain (Belgium) and has taught in Belgium as well as abroad – as a Visiting Professor at

the Universities of Geneva, Montreal, Ottawa, Paris I, Rennes, Strasbourg and Louisiana State University – in the fields of criminal law (general part), comparative and European criminal law, juvenile justice and human rights protection systems.

18. From November 1998 to September 2012, she was a Judge in the European Court of Human Rights, serving as Section President from January 2007 and as Vice-President of the Court from February 2011.
19. Ms Tulkens is the author of many publications in the areas of human rights and criminal law and also co-author of reference books: *Introduction au droit penal. Aspects juridiques et criminologiques* (9<sup>th</sup> edn., 2010) and *Droit de la Jeunesse : Aide, Assistance et Protection* (2000). She also co-edits: *Code de droit international humanitaire* (6<sup>th</sup> edn., 2013), *International Humanitarian Law Code* (1<sup>st</sup> edn., 2013) and *Code de droit international des droits de l'homme* (5<sup>th</sup> edn., 2014). She is a member of editorial boards of a number of scientific journals, among which the *Revue trimestrielle des droits de l'homme*, the *Journal of International Criminal Justice* and the *Inter-American and European Human Rights Journal*.
20. In 2013 she has been appointed as a member of the Scientific Committee of the Fundamental Rights' Agency (FRA) of the European Union. She is a member of the Scientific Committee of the Brussels Bar Human Rights Institute and of the Board of Trustees of the Academy of European Law.
21. She holds honorary doctorates from the Universities of Geneva, Limoges, Ottawa and Ghent. She has been an Associate Member of the Belgian Royal Academy of Sciences, Literature and Fine Arts since 2011.
22. Ms Tulkens is currently Chair of the Board of Governors of the King Baudouin Foundation.

## 2.2 Secretariat Staff

23. The Secretariat Staff consists of an Executive Officer, three legal officers and two administrative assistants.
24. **Andrey Antonov**, a Russian citizen, joined the Secretariat in June 2011 as Executive Officer. Previously, Mr Antonov worked as an Investigator with the Investigation Division of the Office of Internal Oversight Services at the UN HQ (2011), as a Conduct and Discipline Officer at the United Nations Mission in Sudan (2009-2011), as the Legal Advisor at the United Nations Integrated Office in Sierra Leone (2008-2009), as a legal officer with the Criminal Division of the Department of Justice (DOJ) of the United Nations Mission in Kosovo (UNMIK) (2005-2008), and as a legal officer at the Judicial Integration Section of UNMIK's DOJ (2003-2005). Before joining the United Nations, Mr Antonov served with the Russian Ministry of Internal Affairs (MIA), as a criminal investigator with the transport police department (Anapa, 1996), and a lecturer/senior lecturer in Criminal Procedure and Criminal Investigation (Krasnodar University, Russian MIA, 1999-2003). He first arrived in Kosovo in 2000 as a member of the Russian Police



Contingent seconded by the Russian MIA to serve with UNMIK Police, where he worked as a legal officer at UNMIK's Police Commissioner's Legal Office until 2002. Mr Antonov holds a PhD in Law, specializing in Criminal Procedure, Criminal Investigation and Crime Detection from the Volgograd Law Academy of the Russian MIA and an LLM in Law from the same institution. He has also authored more than 30 publications in Russian periodicals related to different aspects of criminal investigations.

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

26. **Brandon Gardner**, an American citizen and former member of the Pennsylvania Bar, joined the Secretariat as a legal officer in October 2011. Previously, Mr Gardner served as a Legal Advisor to the Elections Complaints and Appeals Commission on behalf of the Organization for Security and Cooperation in Europe's Mission in Kosovo (2009-2011).

Prior to that, Mr Gardner served as a legal officer in the External Relations Section of UNMIK's Department of Justice and in UNMIK's Rule of Law Liaison Office (2007-2009). Mr Gardner also has practised as an attorney in Pennsylvania (2006-2007). Mr Gardner holds a Juris Doctorate from the University of Pittsburgh School of Law, and a Bachelor of Arts in Political Science and International Relations from the University of Pittsburgh.

27. **R. Dule Vicovac**, a Canadian citizen and member of the Manitoba Bar in Canada and Minnesota Bar in the United States, joined the Secretariat as a legal officer in August 2014. Previously Mr Vicovac worked as an attorney in criminal and refugee cases in Canada (2013-2014) after spending over 12 years in the former Yugoslavia. He also worked as a legal expert in an EU-funded legal aid project assisting displaced persons from Kosovo (2011-2012), as a Team Leader/Legal Expert in an EU-funded project with the Ministry for Human & Minority Rights of Serbia (2010-2011) and as a Legal Expert with the Danish Refugee Council assisting displaced persons in the former Yugoslavia (2008-2009). Prior to that Mr Vicovac served as a legal officer with UNMIK's Department of Justice as the Acting Registrar of the International Judicial Support Division (2007- 2008) and as an Associate Legal Officer of the Judicial Integration Section, (2002-2007). Mr Vicovac served as Head of Region, Peja/Pec, Prizren & Montenegro, Housing and Property Directorate, UN-Habitat (2002) and Field Coordinator, Housing and Property Directorate, UN-Habitat (2000-2001). Mr Vicovac holds a Juris Doctorate from Hamline School of Law in Minnesota and also attended the University of Manitoba and Oxford University. He

holds a Bachelor of Arts in Justice and Law from the University of Winnipeg. His article titled, “*Challenges in Providing Legal Aid to Persons Displaced Following an Armed Conflict, Lessons Learned from Kosovo*” was published by the Oxford Journal for Human Rights Practice.

28. **Adlije Muzaqi**, a national staff member and team assistant, has been working with the Secretariat since September 2010. She commenced employment with the United Nations in October 1999 as an administrative assistant with the UNMIK Municipal Administration in Vushtrri/Vučitrn Municipality, Mitrovicë/Mitrovica Region.
29. **Larisa Barišić**, a national staff member and legal assistant, joined the Secretariat in October 2015. Prior to joining the Panel, she had been serving the Organization for Security and Cooperation Mission in Kosovo for several years. Ms Barišić holds Bachelor of Arts in Political Science and International Relations from the Faculty of Political Sciences, University of Belgrade and pursues her Master studies in International Law and Humanitarian Law from the Faculty of Law, University of Belgrade.

### 2.3 Secretariat Staff who served in 2015

30. **Snežana Martinović**, a national staff member and legal assistant, worked with the Secretariat from December 2007 through June 2015. She commenced employment with the United Nations in April 2000 as an administrative clerk with the UNMIK Police Department. In October 2002, she took up a position as an administrative assistant with the UNMIK Department of Justice. She is now working with the United Nations Mission in Liberia as an administrative assistant to the Special Political Advisor of the Deputy SRSG.

## 3. Media and NGO Coverage of HRAP

31. In the reporting period, there was significant media coverage of the Panel’s opinions on the complaints related to MMP, as the fate of such persons continues to be an area of concern throughout the region. For example, on 12 November 2015, *Vesti*, a news organization which disseminates its reporting throughout the Serbian speaking world in print and electronically via its website *Vesti online*, published a story about a family’s reaction to the HRAP opinion in one of its MMP cases, *Kostić*. The story noted that although the HRAP had found that UNMIK committed violations of Articles 2 and 3 of the ECHR related to its ineffective investigation into the abduction and killing of their family members, UNMIK had not provided any compensation to the families. The story quotes a representative from the Association of the Families of the Kidnapped and Murdered in Kosovo, who stated that this opinion of the Human Rights Advisory Panel of UNMIK is “throwing the dust in the eyes” of families who seek to find the truth about the fate of their loved ones. The story states:

“[She] stated that it took years before the families of those kidnapped and murdered in Kosovo realized that the opinion of the Advisory Panel, which they so eagerly awaited, thinking of it as the most important step to prove the crimes, is nothing more than dust in the eyes. The Advisory Panel was established by UNMIK; however, it did not confirm those numerous opinions adopted by the Advisory Panel with not even with one percent of its actions. Even the fact that their mission will soon come to an end shows us that the idea behind all of this was to pull the wool

over our eyes and buy time, because with these opinions not even one Serbian or non-Albanian family managed to achieve its satisfaction before the court... Given that UNMIK has not taken any actions, the Advisory Panel has not contributed in any way whatsoever for the truth to be revealed in a more expedited manner and to achieve justice for the Serbian victims.”<sup>7</sup>

32. During the reporting period, Amnesty International (AI) continued its correspondence with the SRSG concerning the Panel’s MMP opinions. On 22 February 2016, AI sent a letter to the SRSG in which it reiterated its concerns on behalf of the complainants in the Panel’s MMP opinions. Specifically, AI noted that “[o]ur concerns focus on the continued denial of access to an effective remedy for the relatives of predominantly Kosovo Serbs whose family members are believed to have been abducted or disappeared during and after the armed conflict. This lack of remedy includes the failure to ensure access to justice and to reparation, including compensation, as recommended by the Panel. In almost every case... the Panel recommended that UNMIK pays the victims compensation, for the failure to investigate and in some cases, for the distress and mental suffering caused by this failure [and] that the relevant authorities should reopen or continue the criminal investigations in the cases decided by the HRAP.”
33. AI also noted that while the HRAP recommendations to the SRSG are of an advisory nature “we are concerned that the panel’s advice has not been heeded or put into practice. Amnesty International is extremely concerned that, as a consequence, the victims of these violations continue to be denied the right to an effective remedy, as set out in International and regional standards applicable in Kosovo...”
34. Returning to the issue of compensation for the victims in the MMP cases, as recommended by the Panel, AI noted that “in his August report to the Secretary- General, the SRSG advocated ‘continuing the search for a means to compensate the families’.” AI also queried the SRSG as to “what measures have been explored with a view to resolving this long-standing issue since July 2015, when the Secretary General’s report also noted that ‘no progress [had] been made with regard to the Panel’s recommendations relating to the payment of adequate compensation for moral damages suffered as a result of those violations.’”<sup>8</sup> Recently, after a trip to UN HQ in New York, the SRSG informed the Panel’s Secretariat that he had undertaken many discussions in New York related to the issue of compensation for families. However, the Panel is unaware of any further developments regarding this matter.
35. Additionally, in 2015, the Kosovo-based, Albanian language newspaper *Koha Ditore* provided coverage of the Panel’s opinion in the case *Balaj and others*. The paper noted that the “Pristina Mayor, Shpend Ahmeti, said the decision of the Human Rights Advisory Panel (HRAP) to confirm the responsibility of UNMIK during the Vetevendosje protest in 2007 where two protesters, Mon Balaj and Arben Xheladini, were killed, is good news. Ahmeti said the grief of the victims’ families will not go away but they will be more at peace knowing that justice is prevailing. Ahmeti explained that three HRAP judges confirmed that UNMIK police violated regulations and human rights during the protest.

---

<sup>7</sup> *Vesti online*, 11 December 2015, “Unmik zataškao zločine OVK” (*UNMIK covered up KLA crimes*), <http://www.vesti-online.com/Vesti/Srbija/538812/Unmik-zataskao-zlocine-OVK>

<sup>8</sup> Amnesty International Letter to SRSG Dr Zahir Tanin, 22 February 2016, “Access to Justice for Victims of KLA”.

HRAP also called on UNMIK to apologize to families of the victims and assume responsibility for these acts.”<sup>9</sup>

36. In 2016, there was ample international and local media coverage of the Panel’s opinion in the case *N.M. and Others*, concerning allegations related to lead poisoning and other health problems on account of UNMIK placing members of the RAE community in contaminated camps in Northern Kosovo for many years. The case was covered in the New York Times, *Vesti, Politika*, Al Jazeera, Pristina Insight, and on various human rights related blogs, including Human Rights Watch and the Oxford Human Rights Hub.<sup>10</sup>

## 4. Caseload of the Panel

### 4.1 Statistics

37. During the year 2015, the Panel adopted 45 opinions on the merits (concerning 79 complaints). Subsequently, from January 2016 until the end of May 2016, the Panel completed its caseload of 9 complaints, which remained pending at the end of 2015, adopting 6 opinions on their merits. The Panel also rejected one request for revision of a previous opinion concerning 17 cases (in case *Kostić and others*, 111/09 et al).<sup>11</sup>

### 4.2 Selected Opinions of the Panel by Subject Matter

38. Below are a select number of opinions issued in 2015, listed according to the subject matter, which are highlighted for further discussion in section 5 of this report:

**Right to Life (substantive and procedural) – Right to an Effective Investigation- Right to be Free from Inhuman and Degrading Treatment- Right to Peaceful Assembly**

- *Kadri Balaj and Others*, 04/07 (opinion of 27 February 2015)

**Right to Life (substantive) - Right to Adequate Housing - Right to Health- right to an Adequate Standard of Living**

- *N.M and Others*, 26/08 (opinion of 26 February 2016)

**Right to Life (procedural) – Right to an Effective Investigation**

- *Mira Bulatović*, 275/09 (opinion of 22 April 2015)
- *S.C. and Others*, 13/09 and others (opinion of 22 April 2015)
- *Budimirka Mirić and Others*, 68/09 and others (opinion of 10 September 2015)
- *Žaklina Mišljen and Others*, 58/09 and others (opinion of 13 November 2015)

---

<sup>9</sup> Koha Ditore, 4 March 2015, “Ahmeti: Vërtetimi i përgjegjësishë së UNMIK-ut për vrasjen e Balajt e Xheladinit, lajm i mire” (Ahmeti: Confirmation of UNMIK responsibility for killing the Xheladini Balaj, good news) <http://koha.net/?id=&l=47249>

<sup>10</sup> New York Times, 7 April 2016 “Roma Poisoned at U.N. Camps in Kosovo May Get Apology and Compensation” [http://www.nytimes.com/2016/04/08/world/europe/roma-poisoned-at-un-camps-in-kosovo-may-get-apology-and-compensation.html?\\_r=3#whats-next](http://www.nytimes.com/2016/04/08/world/europe/roma-poisoned-at-un-camps-in-kosovo-may-get-apology-and-compensation.html?_r=3#whats-next)

<sup>11</sup> For detailed statistics, see Annex C.

**Right to Life (procedural) – Right to an Effective Investigation- Right to be Free from Inhuman and Degrading Treatment**

- *Ranko Milenković*, 255/09 (opinion of 26 June 2015)

**Right to Life (procedural) – Right to an Effective Investigation – Right to Family Life**

- *Petar Jovičić*, 233/09 (opinion of 24 June 2015)

**Right to Life (procedural) –Right to be Free from Inhuman and Degrading Treatment- Right to an Effective Investigation- Rights under CEDAW**

- *S.M.*, 342/09 (opinion of 18 March 2016)

**Right to Liberty- Right to an Effective Investigation**

- *Bogoljub Kostić and Others*, 111/09 and others (opinion of 23 October 2015)

**Right to be Free from Inhuman and Degrading Treatment- Right to Social Security and an Adequate Standard of Living**

- *B.K.*, 85/10 (opinion of 13 November 2015)
- *Tomë Krasniqi*, 08/10 (opinion of 17 May 2016)

**Right to Social Security- Right to an Adequate Standard of Living- Right of Access to Court- right to an Effective Remedy**

- *Employees of the Kišnica and Novo Brdo Mines of Trepča Complex*, 81/10 (opinion of 18 May 2016)

**Right to be free from gender-based violence**

- *S.M.*, 342/09 (opinion of 18 March 2016)

## 5. Jurisprudence of the Panel

39. During its session in May 2016, the Panel completed its case work. In closing the last two cases that were on its docket, the Panel issued decisions and opinions that gave a degree of finality to complainants while simultaneously expanding the Panel's jurisprudence on a number of novel procedural and substantive matters. The most important decisions and opinions issued by the Panel from January 2015 until May 2016 are described in more detail below.

### 5.1 Right to Life - Right to an Effective Investigation - Right to be Free from Inhuman and Degrading Treatment - Right to Peaceful Assembly

40. In the case *Balaj and Others*, the complainants complained that UNMIK Police used excessive force during a crowd control operation in Kosovo on 17 February 2007, resulting in the deaths of two victims and the serious bodily injury of two other victims. First, the Panel decided that substantive part of Article 2 of the ECHR was fully applicable to this situation.

41. The Panel also noted that “[i]t was not disputed in this particular case that UNMIK Police used excessive force to disperse the demonstration, failed to exercise proper control over ammunition and also failed to ensure that the officers were adequately trained and had received clear orders. Therefore, in the Panel’s view, the force used was not absolutely necessary within the meaning of Article 2(2) and the totality of these failures amount to a violation of the substantive limb of Article 2 of the ECHR.
42. Regarding the procedural limb of Article 2, the Panel noted that the investigation was launched and the initial actions were conducted in a timely way. The Panel also found that the actions of UNMIK Police and the Special Prosecutor were sufficiently prompt and thorough to satisfy the requirements of Article 2 of the ECHR. However, the delay in interrogating UNMIK Police officers who participated in the operation, for which no explanation was provided by the Special Prosecutor, and the fact that appropriate steps were not taken to reduce the risk of tampering with evidence undermined, in the Panel’s view, the adequacy of the investigation.
43. Concerning the independence of the investigation, the Panel also noted that “the investigation was initially conducted by the Prishtinë/Priština Regional Investigation Unit with the necessary support provided by the Prishtinë/Priština District Public Prosecutor’s Office the District Court. Although the investigation was conducted under an overall lead of an International Prosecutor, the whole investigation was removed from the local jurisdiction and given to a Special Prosecutor, not following the UNMIK’s own rules governing assignment of investigations to international prosecutors and judges. Although this may have somehow explained the complainants’ claim that the investigation was not independent, the Panel could not discern any flaw in the investigation by the Special Prosecutor which would indicate a lack of independence. However, the Panel noted with concern the participation of Romanian UNMIK Police officers in the investigation, although the main suspicion was that the lethal shots came from Romanian police. This is despite the fact that “the investigative Task Force did not formally include any Romanian officers, nor did the Special Prosecutor mention their participation in his Reports” and that “[t]he SRSG confirmed that no UNMIK Police officers of Romanian nationality were members of the Task Force but that ‘the investigators were required to use Romanian interpreters’”. Also considering other circumstances, the Panel concluded that the situation did not offer sufficient guarantees to exclude any legitimate doubt concerning independence and impartiality of the investigation.
44. Furthermore, the Panel also established that the investigation was not open to public scrutiny and that there was no regular review of the process. “Taking into consideration the flaws mentioned above, the Panel finds that the investigation did not display sufficient guarantees of independence and impartiality, as prescribed by Article 2 of the ECHR.”
45. Concerning the thoroughness of the investigation, the Panel noted that the investigation discovered many facts and leads, but failed to thoroughly follow up on most of them. For example, it was established that the rubber bullets were 10 years out of date and should not have been even brought to Kosovo, when the Romanian Special Police Unit arrived or should have been removed during regular (twice per year) inspections of the armories. However, no inquiry was conducted as to how they remained on the shelves and ended up

loaded into the shotguns and killing / injuring people. No conclusion was made as to the possible individual criminal responsibility of those who, by their action or inaction, allowed this to happen. Thus, the Panel considered that the investigation conducted in this case did not satisfy the requirement of thoroughness, as required by Article 2 of the ECHR.

46. Finally, the Panel also noted that the investigation into possible violations of administrative issuances and applicable standards is an inherent part of the procedural obligation in order to avoid impunity. This element, and especially the disciplinary investigation, becomes especially important in the situation, when, as in present case, the investigation was not able to establish individual criminal responsibility. Thus, the Panel expresses its concern about the lack of information of any disciplinary proceedings against those responsible for the major administrative and organisational failures as identified by the Special Prosecutor.
47. The Panel concluded that “[i]n sum, the deficiencies and shortcomings described above raise serious reasons to doubt whether the investigation was capable of finding those responsible and bringing them to justice. Therefore, the Panel concludes that UNMIK failed to carry out an effective investigation into the killing of Mr Mon Balaj and Mr Arben Xheladini and into the grave injuries to Mr Zenel Zeneli and Mr Mustafë Nerjovaj. Accordingly there has been a violation of Article 2, procedural limb, of the ECHR.”
48. Concerning the allegation that UNMIK interfered with the complainants’ right to peaceful assembly in a manner that was unjustifiable and clearly disproportionate, the Panel first recalled that the SRSG fully accepted and stood behind the conclusions of the Special Prosecutor presented in his Reports on the matter. The Panel quoted from his Report, which stated, “[d]uring the course of the demonstration protestors threw objects at police and rushed the KPS units blocking Mother Theresa Street as it approached the Government building. Police discharged tear gas canisters and then advanced down Mother Teresa Street where further encounters took place. Injuries were sustained by police and protestors.”
49. Next, the Panel noted that “the complainants took part in demonstrations with a view to protesting against the Ahtisaari Plan, a proposal accepted by the Provisional Institutions of Self-Government in Kosovo and UNMIK, which was significant for the future of the province. In the Panel’s view, the intention that UNMIK authorities had towards the public events organised by the Vetëvendosje movement, which materialized through interference with the demonstration and the force used by the police to disperse the participants (UNMIK Police “going hard” on the demonstrators), was designed to have a ‘chilling effect’ and discourage the applicants from taking part in similar meetings.”
50. The Panel also recalled that “the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens. The Panel observed that at the material time the applicable legislation did not require an official authorisation from the authorities for the holding of public demonstrations; but the organisers were obliged to notify the authorities (police and municipality) 48 hours prior to the event (Article 3, Law on Public Assembly). In this respect, the Panel recalls the position of the European Court, which confirms that it is important that associations and others organising demonstrations, as actors in the

democratic process, respect the rules governing that process by complying with the regulations in force. In this particular case, no official notification was submitted. However, Vetëvendosje on several occasions publicly announced the demonstration; on 29 January 2007, a newsletter in that regard was also published by the movement.” The Panel also noted that negotiation and/or mediation could be helpful to de-escalate conflict. In this case, the Panel did not see any indication of an attempt by the Vetëvendosje’s leadership to enter into a discussion with UNMIK Police.

51. In addition, the Panel noted that “the police must only use more dangerous means of response when less dangerous ones have proved ineffective, following a scale of continuum of force. However, “this was not the situation on the ground on 10 February 2007, where some police officers did the opposite. On that day, immediately after a very small group of unarmed protesters (around 10 people) tried to push through the police cordon, the authorities intervened swiftly with considerable force in order to disperse the whole demonstration, when gas grenades and rubber bullets were indiscriminately fired into the crowd, hitting and injuring the protestors without regard for their lives and safety; while most of them were not doing anything violent against the police. Furthermore, the injuries to the police officers were insignificant, as most of them were wearing ‘full CRC equipment’. Thus, in the Panel’s view, even though there was violence, the level of danger to the officers was low.”
52. The Panel considered that in this case the forceful intervention of the police officers was disproportionate and not necessary in a democratic society for the prevention of disorder within the meaning of the second paragraph of Article 11 of the European Convention. “In view of the above, the Panel finds that there has been a violation of Article 11 of the ECHR” (see HRAP, *Balaj and Others*, case no. 04/07, opinion of 27 February 2015, §§ 188-190, 202-221, 248-268).

## **5.2 Right to Life - Right to an Effective Investigation - Article 2 of the ECHR**

### **Lack of Effective Investigation-No Record of Substantive Action Taken by UNMIK-ICTY Jurisdiction not Absolute**

53. In the case *Bulatović*, the complainant complained that three armed KLA members in civilian clothes entered the carriage of the train that the complainant and her husband were travelling in, identified Mr Ivan Bulatović and took him off the train; since that time his whereabouts have remained unknown, without UNMIK effectively investigating the crimes. The Panel noted “the SRSG’s assertion that the lack of action by UNMIK Police with regard to this investigation may be attributed to an ICTY investigation into the matter. At the outset, the Panel stresses that it does not dispute the ICTY’s overall primacy jurisdiction to investigate any crime within its jurisdiction committed in the territory of the former Yugoslavia, due to its recognised international status under the UN Security Council’s Resolution 827 (1993).” However, the Panel also noted that “the ‘primacy’ of the ICTY’s jurisdiction is not absolute.”
54. In reviewing the investigative file, the Panel noted that “a formal request for information and cooperation or a request for deferral of proceedings must have been presented by the



ICTY to the national authorities. Thus, the ICTY must have presented such a request to UNMIK, before taking over the case, which would have been formally reflected in UNMIK's documentation. This would, first, justify the lack of UNMIK's authorities' action with regard to particular investigations, and, second, it would enable future tracking and retrieving of the investigative documents and evidence by national authorities, when needed... However, no record of any formal request of such nature is present in the file... The Panel also notes in this respect that the investigative authority must be always clearly defined; in case a takeover of a case by another authority takes place, the file should have a clear record of it. The situation in this case, as it is presented to the Panel, is that the matter was investigated by UNMIK Police and according to the SRSG there was an investigation conducted by the ICTY. In the Panel's view, such a situation should not be allowed to happen, as it creates confusion as to which authority was in charge of the investigation, thus in itself representing a problem under Article 2" (see HRAP, *Bulatović*, case no. 275/09, opinion of 22 April 2015, §§ 137-143).

**No violation because of ICTY Take-over of Investigation into a Mass Disappearance and Killings**

55. In the case *S.C. and Others*, the complaint alleged that UNMIK failed to effectively investigate the disappearance of Mr B.C. and two soldiers of the former Yugoslav army, who along with two more Yugoslav soldiers, were attacked and abducted from a van they were travelling in *en route* from Prizren to Prishtinë/Priština. In reviewing the investigative file, the Panel noted that "[i]n these circumstances, the Panel can accept the SRSG's assertion that UNMIK Police made substantial and wide reaching investigative efforts in accordance with Article 2 procedural requirements to determine both the whereabouts and fate of the victims including: '[i]iaising with Serbian Authorities in order to identify the victims and suspects in the photographs; [s]eeking and obtaining forensic and expert analysis of evidence...[s]eeking information from other international and non-governmental sources; and conducting two exhumations; [c]onducting extensive research on military incidents at the time that [the victims] went missing; [c]ontacting former military commanders; and [i]nterviewing dozens of witnesses'. The Panel notes that the file evidences that UNMIK International Prosecutors played an integral role in following investigative leads... Overall, the Panel considers that the high volume of activity undertaken by UNMIK Police, especially during the period within the Panel's jurisdiction, has the qualities of an effective investigation" (see HRAP, *S.C. and Others*, cases nos 13/09 and others, opinion of 22 April 2015, §§ 143-144).

**Failure to Follow Obvious Investigative Leads after a Concentrated KLA Attack on a Village**

56. In the case *Mirić and Others*, the complainants complained that their family members, including four members over retirement age, were abducted from Dojnicë/Dojnice village, Prizren municipality, in June 1999 during a concentrated attack by KLA members and subsequently UNMIK did not effectively investigate the crimes. The Panel compared the case to its previous case *Mitić and Others*, where the Panel concluded that no substantive effort was made by UNMIK investigative authorities to investigate in a systematic and coordinated manner the disappearance of up to 20 persons from Mushtisht/Mušutište, in

June 1999, during a concerted KLA action, which appeared to the Panel to be an operation of ethnic cleansing. The Panel noted that similarly in this case “no effort was made by UNMIK Police to follow an obvious line of enquiry leading to the KLA group controlling Dojnicë/Dojnice and nearby villages, which in the statements of the witnesses had been implicated in crimes against the civilian inhabitants of the area. The Panel also puts on record that this is not the first time it sees failure to investigate large-scale abductions of Kosovo Serbian residents in the Prizren region of Kosovo, particularly targeting elderly people as some of the most vulnerable people. The apparent lack of an immediate and cohesive reaction from UNMIK may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently” (see HRAP, *Mirić and Others*, cases nos 68/09 and others, opinion of 10 September 2015, §§ 204-206).

### **Prolonged Failures with UNMIK Police to Link Investigations**

57. In the case *Mišljen and Others*, the complainants complained that their family members were disappeared in the area of Pejë/Peć on 19 June 1999 while travelling by car from Belgrade to Pejë/Peć without UNMIK effectively investigating the crimes. In reviewing the investigative file, the Panel noted that “[i]n the SRSG’s own words, it was imperative for UNMIK Police to establish order and to quickly construct a framework to register and investigate crimes. The Panel agrees with the SRSG. However, despite the variety of information available to UNMIK authorities in this case, no reasonable investigation was conducted. To the Panel this indicates that this obligation is not fulfilled simply by the establishment of an adequate framework, but only when the framework becomes a properly coordinated system capable of carrying out an adequate and effective investigation in accordance with Article 2 of the ECHR. In this particular case, the prolonged failure of UNMIK Police MPU and WCIU to link the cases (until 2005) speaks for itself” (see HRAP, *Mišljen and Others*, cases nos 58/09 and others, opinion of 13 November 2015, § 175).

## **5.3 Right to Be Free from Inhuman and Degrading Treatment - Article 3 of the ECHR**

### **15 Year Delay for UNMIK Police to Return Mortal Remains of Family Member Caused Great Distress to Complainants**

58. In the case *Milenković*, which concerned the complainant’s allegation that UNMIK did not perform an effective investigation into his brother’s disappearance and killing and also did not inform him of the status of its investigation, the Panel first reviewed the investigative file, noting that “[t]he last recorded contact between the family of Mr Rajko Milenković and UNMIK authorities was in January 2002... It was only in October 2014, which is fifteen years after Mr Rajko Milenković’s disappearance, that his mortal remains were eventually returned and put to rest and that the family received the necessary documents... [T]he long delay was caused by a mistake of the OMPF, which was under the

authority of UNMIK. In the Panel's view, UNMIK should have informed the family of the identification of Mr Rajko Milenković's mortal remains, thus making sure that they no longer suffered for lack of information about his fate, and handed over the necessary identification documents. Further, as to the loss of the body, UNMIK should have explained the situation to the complainant and his family, apologised to them for the mistake and assured them that it would be rectified as soon as possible. The family should have been regularly apprised thereafter of any progress in this respect."

59. "However", the Panel noted, "UNMIK authorities chose in those circumstances the most painful way to treat the family – that is with silence, never even informing them that the fact of Mr Rajko Milenković's death had been positively established. In effect, the complainant's brother 'went missing' for a second time solely because of UNMIK's oversight, thus adding to the pain already suffered by his family members. At least two of the closest relatives of Mr Rajko Milenković, his wife and his brother, died before they received confirmation of his fate. In the Panel's view, especially grave suffering was caused to the family from the time they were made aware of a possible identification, in November 2000 and of a probable need for re-exhumation, after which they received no further information until the receipt of Mr Rajko Milenković's mortal remains, in 2014."
60. The Panel took into account "the fact that already in March 2002, an MPU officer noted that Mr Rajko Milenković's 'family are not very happy with the way they have been treated ... I strongly suggest that a family meeting takes place quite soon, mainly because of the poor treatment they have received. So, it would be good if some faith was restored in them from UNMIK'. Nevertheless, no contact with the family, even a courtesy one, seems to have taken place. Furthermore, in the situation where the location of Mr Rajko Milenković's grave and the circumstances of his burial were unknown, the Panel cannot accept the SRSG's statement that his mortal remains 'were buried with dignity and respect by UNMIK.' "
61. The Panel concluded that "the complainant and his family have suffered severe distress and anguish for a prolonged period of time, a substantial part of which falls within the Panel's temporary jurisdiction, on account of the way the authorities of UNMIK have dealt with the case and as a result of their inability to find out what happened to the mortal remains of Mr Rajko Milenković. In this respect, it is obvious that the pain which was inflicted on the complainant and his family, who had to live in uncertainty about the fate of Mr Rajko Milenković, must have been unbearable" (see HRAP, *Milenković*, case no. 255/09, opinion of 26 June 2015, §§ 201-204).

**No Evidence that UNMIK was Aware of the Displacement of Mortal Remains**

62. In another case, *Jovičić*, the complainant complained that UNMIK's failure to properly notify him about the death of his wife and about the displacement of her mortal remains, caused him pain and suffering. Specifically, while the complainant was forced to leave Kosovo for security reasons, the complainant's wife, Mrs Aljinović, had been hospitalised in Prizren hospital in March 1999, and had died of natural causes in Prizren hospital, on 8 August 1999 without her husband's knowledge. However, in the confusion, she had

apparently been listed as disappeared by the ICRC. Subsequently, her body was buried at the Prizren city cemetery, but the exact location of her grave in that cemetery was not known. Sometime later, at least one exhumation of a number of mortal remains, suspected to be those of the unidentified local Serbian residents who had been killed shortly after the arrival of KFOR and UNMIK in Prizren and the surrounding area, was conducted in that cemetery. The complainant made numerous attempts thereafter to locate his wife's mortal remains, including visiting the Prizren city cemetery and making enquiries with its staff, but was unable to find where she had been buried.

63. After reviewing the file, the Panel noted that “[a]lthough there is no doubt that Mrs Krasenka Aljinović had died of natural causes, there might be still an obligation on the part of the authorities to investigate the matter, similarly to that with respect to disappearances under Article 2 of the ECHR (right to life, procedural part). However, such responsibility would only be triggered once the matter has come to their attention. The Panel has on a number of occasions found that UNMIK authorities were obliged to investigate disappearances from the time they were made aware of such allegations. The Panel has also considered ICRC notifications of disappearances to UNMIK to be sufficient to trigger the obligation to investigate under Article 2. In this regard, the Panel acknowledges that the file before it includes a document confirming that there was an MPU case opened in relation to Mrs Krasenka Aljinović, probably in 2003. The Panel notes that the MPU file contains the death certificate confirming that she died of natural causes and therefore indicating that it was not caused by a criminal act.”
64. The Panel also noted that “it appears to the Panel that MPU, based on the information available to them, had initially qualified the case of Mrs Krasenka Aljinović as a possible killing and/or disappearance. However, upon confirming that she had in fact died of natural causes and was subsequently buried in the Prizren cemetery, and because of its specific mandate, the MPU could discontinue its investigation, as there was no doubt as to her fate... However, the complainant has not alleged that he contacted any UNMIK authorities to inform them of the situation and request them to clarify the location of his wife's mortal remains... and the file contains no indication that in the instant case UNMIK authorities were ever informed or were otherwise made aware of the alleged disappearance of Mrs Krasenka Aljinović's mortal remains and requested to locate them. The Panel regrets that until now the complainant has not been able to find his wife's final resting place, which undoubtedly causes him pain and suffering. However, in the described circumstances the Panel is not persuaded that by their conduct the UNMIK authorities caused or in any way contributed to the complainant's mental distress in connection with the death and subsequent alleged disappearance of the mortal remains of Mrs Krasenka Aljinović.” Therefore, the Panel found that UNMIK had not committed a violation of Article 3 of the ECHR.
65. Concerning the complaint regarding UNMIK's violation of Article 8 of the ECHR, the Panel noted that it “has not found sufficient evidence to prove, first, that the mortal remains of the complainant's wife were indeed removed from the grave, and second, that the complainant had complained to the relevant UNMIK authorities about that, or that he had unsuccessfully requested UNMIK to establish the whereabouts of her mortal remains. Therefore, in view of the evidence before it, the Panel is unable to establish a violation of

Article 8. The Panel reiterates its regrets that until the present day the complainant has not been able to find the final resting place of his wife's mortal remains, which undoubtedly causes him pain and suffering. However, the Panel does not find sufficient evidence that UNMIK authorities in any way interfered with the complainant's right to family life" (see HRAP, *Jovičić*, case no. 233/09, opinion of 24 June 2015, §§ 81-87, 96-98).

#### **5.4 Right to Life - Article 2 of the ECHR - Right to Be Free from Inhuman and Degrading Treatment - Article 3 of the ECHR and Right to Family Life - Article 8 of the ECHR**

66. In the case *N.M. and Others* the complainants were 138 members of the Roma, Ashkali and Egyptian (RAE) community in Kosovo who used to reside in five UNMIK administered camps for internally displaced persons (IDPs) throughout northern Mitrovicë/Mitrovica (Zhikoc/Žitkovac, Cesminluke/Česmin Lug, Kablare, Leposaviq/Leposavić, and Osterode). They were placed there after their homes in Southern Mitrovicë/Mitrovica had been destroyed in 1999, inter-ethnic violence and the destruction of their homes.
67. During the 1999 conflict in Kosovo, many Roma who had formerly lived in the Roma Mahala settlement in south Mitrovicë/Mitrovica fled to north Mitrovicë/Mitrovica as a result of inter-ethnic violence and the destruction of their homes. Approximately 600 Roma were placed in IDP camps (Zhikoc/Žitkovac, Cesminluke/Česmin Lug, Kablare, Leposaviq/Leposavić, and Osterode) near the Trepča smelter and its sites used to store the waste from mining.
68. Approximately half of the complainants were children when the complaint was filed with the Panel. About 75 complainants are women and girls. At least 13 of them delivered babies in the camps and have submitted the complaint also on behalf of their children.
69. All complainants claim to have suffered lead poisoning and subsequent health problems on account of the soil contamination in the camp sites due to their proximity to the Trepča smelter and mining complex and on account of the generally poor hygiene and living conditions in the camps. Four complainants claim that their family members died in the camps as a result of lead poisoning.
70. The Panel considered that it was up to UNMIK in this case to rebut the prima-facie allegations put forward by the complainants and declared admissible by the Panel. The Panel took note of the fact that no documentation has been submitted by UNMIK, notwithstanding the special knowledge that UNMIK had or should have had about the health situation in the camps and despite the Panel's repeated requests to submit especially those documents referred to or relied upon by the SRSG and considered that it could justly draw "strong inferences" from the available documentation in this case.
71. The Panel found that UNMIK violated the complainants' right to life, in its substantive and procedural aspects, as guaranteed by Article 2 of the European Convention on Human Rights (ECHR), their right to be free from inhuman and degrading treatment (Article 3 ECHR) and their right to respect for private and family life (Article 8 ECHR). The Panel considered that UNMIK's failure to relocate them to a safe environment constituted

discrimination against the complainants as members of the RAE community in violation of Article 14 of the ECHR, taken in conjunction with the ECHR provisions mentioned above, of Articles 2 and 26 of the International Covenant on Civil and Political Rights and Article 2 of the of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

72. The Panel further found that the unhealthy and unhygienic conditions in the camps constituted a violation of the complainants' rights to an adequate standard of living, including the right to housing (Article 11 of the ICSECR) and the right to the highest attainable standard of health (Article 12 of the ICESCR).
73. With respect to female complainants, the Panel considered that they were also subject to multiple discriminations in the enjoyment of their fundamental rights, as women, as IDPs and as members of the RAE community in violation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Panel also found UNMIK responsible for compromising irreversibly the life, health and development potential of the complainants that were born and grew as children in the camps, in violation of Articles 3, 6, 24, 27 and 37 of the Convention on the Rights of the Child.
74. The Panel provided a number of recommendations to UNMIK including, among other things, to publicly acknowledge its failure to comply with applicable human rights standards in response to the adverse health condition caused by lead contamination in the IDP camps and the consequent harms suffered by the complainants, and to make a public apology to them and their families.
75. The Panel also recommended that UNMIK take appropriate steps towards payment of adequate compensation for material and moral damage in relation to the finding of the violations of the human rights provisions listed in the opinion.
76. The Panel also recommended that UNMIK take appropriate steps to ensure that UN bodies working with refugees and IDPs promote and ensure respect for international human rights standards and that the findings and recommendations of the Panel in this case are shared with such bodies, as a guarantee of non-repetition. The Panel also recommended that UNMIK take appropriate steps towards UN bodies to ensure effective distribution of information relevant to the health and well-being of people under their authority and control.
77. In addition, the Panel recommended that UNMIK urge UN bodies and relevant authorities in Kosovo to protect and promote the human rights of Roma people, especially women and children, ensuring that they have a proactive role.

#### **5.5. Right to Life (procedural) – Right to be Free from Inhuman and Degrading Treatment - Right to an Effective Investigation - Rights under CEDAW**

78. In the case *S.M.*, in which the complainant complained that there had been an ineffective investigation after she had been assaulted in their family home in Bellopole/Belo Polje village, Pejë/Peć municipality, by numerous Albanian men, including one wearing KLA insignia. The attackers assaulted her, blindfolded her and tied her to a chair, and then

within earshot, three of them raped her daughter, Ms X., who had mental and physical disabilities. They then killed her daughter by slitting her throat with a razor.

79. Regarding the ineffective investigation, the Panel first noted that “there is no evidence in the file that any distinct enquiries were ever made into the rape and killing of Ms X. The SRSG admits the same when he states ‘with respect to the investigation aimed at identifying and bringing to justice the perpetrators who are responsible for the death of [Ms X.], it is unclear, based on the files received from EULEX, whether any investigation was conducted. It is similarly unclear whether investigations into her death were part of investigations carried out for another case (see § 53 above).’ In any event, the Panel notes that there is no evidence in the file of any further investigative activity or other meaningful action undertaken by UNMIK Police during the period within the Panel’s temporal jurisdiction.”
80. Regarding the right to be free from inhuman and degrading treatment, the Panel noted that “the complaints under the procedural leg of Article 3 of the ECHR, are the same as those that it has already examined under the procedural leg of Article 2 of the ECHR. Thus, in the Panel’s view, the main legal questions arising from these complaints have already been examined under Article 2, in respect of which it has found a violation. Accordingly, the Panel would normally consider it unnecessary to determine separately whether in the instant case there has been a violation of Article 3 of the ECHR. However, due to the brutality of the case and the importance of recognizing the incidence of sexual violence during and in the aftermath of conflict, the Panel finds it necessary to explicate the matter. The Panel notes that, concerning the burden of proof, UNMIK has not discharged its obligation in this regard, as it has neither presented a complete investigative file, nor has it in a “satisfactory and convincing” way explained its failure to do so. Accordingly, the Panel will draw inferences from this situation.”
81. Turning to the circumstances of the present case, the Panel recalled that “Ms X. was brutally raped and killed and Mrs M. was assaulted on 26 June 1999, shortly after the deployment of UNMIK in Kosovo. The Panel also recalls that rape constitutes inhuman and degrading treatment, such that UNMIK was obligated to investigate it, and any failure to have done so would amount to a violation of Article 3 of the ECHR. The Panel also takes account of the especially cruel acts in this case, specifically that Ms X., a physically and mentally challenged woman, was assaulted by multiple armed men, then brutally raped and butchered by slitting her throat with a razor. Meanwhile, her elderly mother was assaulted, tied to a chair and blindfolded by armed men before being forced to listen to her daughter screaming as she was being raped and slaughtered in the room next door.”
82. The Panel found that “such a heinous situation is properly classified as reaching the threshold of torture. This is obvious in regards to Ms X. where the accumulation of the acts of physical violence and the especially cruel acts of rape to which she was subjected amounted to torture in breach of Article 3 of the ECHR. The treatment her mother Mrs M. was subjected to also amounts to torture, as she was forced to bear witness to the horror acted upon her mentally challenged daughter. In fact, the United Nations Security Council has itself recognized “those secondarily traumatized as forced witnesses of sexual violence against family members”. Similarly, the Panel notes that the IACtHR has found that rape

in the presence of a member of the family has a particularly serious significance, increasing the humiliation of the victim and the trauma for both of them. In such a case, the Panel finds that UNMIK had an obligation to conduct an investigation, pursuant to Article 3 of the ECHR. However, the Panel has already found that there is no indication in the investigative files that UNMIK carried out an effective investigation into finding the perpetrators of these crimes and bringing them to justice.”

83. Therefore, the Panel concluded “that UNMIK failed to carry out an effective investigation into the assault and rape of Ms X. and the assault of Mrs M. There has accordingly been a violation of the procedural limb of Article 3 of the ECHR and Article 7 of the ICCPR.”
84. Finally, concerning the violations of the CEDAW, the Panel noted that “one of the victims in the case, Ms X., was a woman with disabilities subjected to a horrific incident of gender-based sexual violence, directed against her because of her ethnicity and because she was a woman. As such, the Panel notes that pursuant to CEDAW General Recommendation No. 19, UNMIK had an obligation to act with due diligence to investigate, prosecute and punish the act of violence that was committed against her. However, the Panel reiterates that there is no evidence in the file that UNMIK made any investigation whatsoever into Ms X.’s rape. In such circumstances, the Panel concludes that Ms X. was subject to gender-based violence that was not investigated with the due diligence by UNMIK, in violation of the relevant provisions of the CEDAW Convention” (see HRAP, *S.M.*, case no. 342/09, opinion of 18 March 2016, §§ 134-141, 148-149).

## **5.6 Right to Liberty - Right to an Effective Investigation - Article 5 of the ECHR**

85. In the case *Kostić and Others*, some of the complainants complained that UNMIK did not effectively investigate the crimes in which their family members were abducted on 18 July 1998 during an armed assault by the KLA on the villages of Opterushë/Opteruša and Retimlë/Retimlje, Rahovec/Orahovac municipality and subsequently detained by the KLA in the monastery “Sveti Vraći” in the Zoqishtë/Zočište village, Rahovec/Orahovac municipality before being transferred and later released. After reviewing the investigative file, the Panel first found that UNMIK had committed a violation of the procedural limb of Article 2 of the ECHR through its ineffective investigation. Next, concerning Article 5 of the ECHR, the Panel noted the following: “The undisputed facts are that a number of civilians, including Mrs Angelina Kostić, Mrs Petra Kostić, Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić, had been abducted by the KLA from their homes, on 18 July 1998, separated from the men of their families, detained, and afterwards released to the ICRC, on 22 July 1998. This group comprised mainly women, but also some elderly men and those with disabilities, Orthodox monks and children. Thus, in the Panel’s view, this separation and subsequent detention affected women disproportionately. UNMIK was thus obliged to investigate with due diligence this act of gender-based violence. The Panel notes that, notwithstanding its limited duration, the complainants’ abduction and deprivation of liberty for four days by the KLA amounted to illegal detention in the sense of Article 5 of the ECHR. In this regard, the Panel recalls that they were held a day and a night under armed guard in a camp.”



86. The Panel also noted that “there is an additional danger, including sexual violence exists for women and girls when they are deprived of liberty, including in situations of armed conflict. In the Panel’s view, investigation of any situation when women are deprived of liberty by a party to the armed conflict must take into account the potential possibility of sexual and gender-based violence against them. An effective investigation in such circumstances should be conducted in a gender-sensitive manner. In this respect, the Panel notes that the CEDAW Committee, in its General Recommendation No. 33, recommends that the State parties ensure that ‘the professionals of justice systems handle cases in a gender-sensitive manner’ ”. The Panel considered that the detention of the victims required an investigation by competent authorities, in this case by UNMIK, upon its deployment in Kosovo.
87. The Panel recalled that it “has already found that this investigation did not meet the requirements of effectiveness under Article 2 of the ECHR. The Panel further notes that the investigative file does not reflect any specific arrangement in place to ensure that any information with regard to the potential danger the women may have been exposed to during their illegal detention by the KLA was collected, preserved, analysed and used towards identifying instances of violence against women and bringing the perpetrators to justice. The records of the interviews with the complainants and other survivors of the abduction and detention in July 1998, show that the issues of gender and additional vulnerability were not taken into consideration by the authorities, as the situation of the complainants would have required. In particular, the investigative file in the Panel’s possession shows that only two victims, Mrs Petra Kostić and Mrs Angelina Kostić, were interviewed by the ICTY and UNMIK Police. The Panel notes that these interviews, as well as all interviews with other witnesses, including female and children survivors of abductions and detention, were conducted by male investigators. The Panel is concerned that these deficiencies in the investigations may have resulted in the loss of information about patterns of violence against civilians in Kosovo.”
88. The Panel also recalled that “the lack of information regarding the possible abuses of women by KLA during the armed conflict in Kosovo was already acknowledged by researchers. The Panel is also concerned that the lack of such an investigation, may have contributed to the overall lack of information and documents about the violence against women in Kosovo, thus introducing additional obstacles for the victims in their attempts to get any form of redress for their suffering. Therefore, in light of the finding of a violation of the procedural limb of Article 2 of the ECHR, the Panel finds that there was also a violation of the rights of Mrs Angelina Kostić, Mrs Petra Kostić, Mrs Slavica Banzić, Mrs Desanka Banzić and Mrs Dragica Božanić, guaranteed by Article 5 of the ECHR (see HRAP, *Kostić and Others*, cases nos 111/09 and others, opinion of 23 October 2015, §§ 338-346).

#### **5.7 Right to be Free from Inhuman and Degrading Treatment - Right to Social Security and an Adequate Standard of Living**

89. In the case *B.K.* the complainant complained that UNMIK facilitated his deportation to Kosovo after twenty-three years of continuous stay in the USA without providing him with any assistance upon his arrival in Kosovo, leaving him without proper housing and food,

access to basic social and medical care, work or the financial means to sustain himself. The Panel deemed that this complaint invoked a violation of his right to be free from inhuman and degrading treatment as guaranteed by Article 3 of the European Convention on Human Rights (ECHR) as well as a violation of his right to work, to social security and to an adequate standard of living as guaranteed by Articles 6, 9 and 11 respectively of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

90. In response to the SRSG's objection that economic and social rights are not guaranteed under the ECHR, the Panel referred to the case-law of the European Court, noting there is no "water-tight division separating that sphere from the field of civil and political rights covered by the Convention and that, for example a wholly insufficient amount of pension and social benefits may raise an issue under Article 3 of the Convention. The Court has stated that, consequently, it cannot exclude the possibility that the responsibility of the State may be engaged under Article 3 in respect of treatment where an applicant, who was wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity. The Panel notes that...UNMIK had a responsibility under UN Security Council Resolution No. 1244 (1999) and subsequent UNMIK Regulations to set up a system for readmission of repatriated persons originating from Kosovo which fully complied with international human right standards applicable to UNMIK, including those stemming from the ECHR and the ICESCR. The Panel notes that, indeed, between 2006 and 2007, UNMIK developed jointly with the Kosovo PISG a Readmission Policy and a Reintegration Strategy to this aim. The Panel notes that, under the Readmission Policy, it was clearly stated that UNMIK retained overall competencies on the implementation of readmission procedures."
91. The Panel also noted that "until 15 June 2008, UNMIK continued to exercise executive powers in Kosovo, including those related to readmission procedures as highlighted above. In fact, it is explicitly accepted by the SRSG, that UNMIK was in principle responsible for providing a minimum core level of assistance to the complainant between his arrival in Kosovo on 6 May 2008 and 15 June 2008. However, the SRSG claims that it was up to the complainant to contact relevant UNMIK authorities to inform them of his need for assistance and that he did not prove that he did so, nor he proved that UNMIK reacted inappropriately or with indifference to his request for assistance. The Panel notes that an effective system of assistance upon repatriation must have in place procedures through which those vulnerable persons in need of special assistance and protection can be identified. Indeed the 2007 UNMIK-PISG's Reintegration Strategy for repatriated persons envisaged that all returnees should be provided with 'initial reception and information assistance' at Prishtinë/Priština airport by staff of the Ministry of Social Labour and Social Welfare in order to identify the immediate, as well as the long-term needs of returnees and forward such information to the Ministry of Local Government Administration. Therefore, the Panel concludes that, even if for some reason the letters containing a request for assistance that the complainant reportedly sent to UNMIK, were not forwarded to the relevant office or person, an effective system for repatriation which is compliant with international human rights standards, should have been available and able to identify the complainant as a vulnerable person, assess his need for assistance and provide him with the required support."

92. The Panel also noted that “there is evidence of failures and deficiencies in the implementation of the UNMIK-PISG Readmission Policy and Reintegration Strategy. For example...in its report of November 2009 on the implementation of the Reintegration Strategy, the OSCE stated that, since its adoption in 2007, ‘only few steps’ had been taken to implement the strategy at the local level. This report states, in particular, that there was a general lack of awareness among relevant local authorities of their roles and responsibilities towards repatriated persons, that concrete measures to facilitate their reintegration had not been adopted, that no referral mechanism had been established and no costs had been associated with the process of reintegration.”
93. Next, the Panel noted that “even accepting UNMIK’s responsibility to provide minimum core assistance to those repatriated, especially the most vulnerable, the SRSG states that the complainant himself would not fall within this category, in consideration of the fact that he is a ‘habitual resident’ of Kosovo, therefore not fully dependent on state support. In this regard, the Panel disagrees with the SRSG that the complainant can be labelled a habitual resident of Kosovo at the moment of his repatriation, taking into account the fact (not disputed by the SRSG) that, prior to repatriation, he had been living for 23 uninterrupted years in the USA. The Panel considers that, after such a long absence from Kosovo, which encompassed the armed conflict, as well as major social and political transformations in Kosovo, the complainant was no longer an integrated member of Kosovo society. The Panel also notes that the complainant states he has been affected by a medical condition since birth. In any case, the Panel also notes that the fact of being a ‘resident’ would not shield a person from a violation of his basic economic and social rights. In this respect, the Panel recalls the case-law of the European Court mentioned above that even those residents who are recipients of a pension or other social benefits could claim a violation of Article 3, when these are ‘wholly insufficient’ to live with dignity. Lastly the Panel recalls that the European Court has found a violation of Article 3 even in cases in which the situation of serious poverty, deprivation and want of those in need of special protection lasted for a period of time as short as two weeks.”
94. The Panel therefore concluded that “the complainant was in a situation that required a core level of assistance from UNMIK to cover his basic needs in the period immediately after his deportation to Kosovo which, however, he did not receive to the failure of the system to identify and assess his need for support. The Panel considers that, for the period from 6 May 2008 to 15 June 2008, such failure is attributable to UNMIK. The Panel considers that a result of UNMIK’s failure as described above, upon his forced deportation from the USA, the complainant found himself in a situation of extreme poverty and want constituting inhuman or degrading treatment contrary to Article 3 of the ECHR. The Panel also considers that the very limited level of assistance provided by UNMIK to the complainant failed to comply with the minimum core obligations under Article 9 and 11 of the ICESCR to take appropriate steps, to the maximum of available resources, to fulfil the complainant’s right to an adequate standard of living (Article 11) and social security (Article 9). However, the Panel does not consider that the period while UNMIK retained executive responsibilities is sufficient to establish also a violation of the complainant’s right to work, as envisaged by Article 6 of the ICESCR” (see HRAP, *B.K.*, case no. 85/10, opinion of 13 November 2015, §§ 44-53).

95. In the case *Tomë Krasniqi*, the complainant complained that UNMIK did not help him receive his contributory pension from 12 December 1998 until April 2007 based on his years of contribution to the former Yugoslav Fund of Pensioners and Disabled People, which violated his right to peaceful enjoyment of possessions pursuant to Article 1 of Protocol No. 1 to the ECHR. He also complained that because of the non-payment of his “contributory” pension during the period from 1999 to 2007, and because of the inadequacy of the old age pension granted to him thereafter, he was left without the financial means to sustain himself. In this regard, the complainant invoked a violation of his right to social security and to an adequate standard of living as guaranteed by Articles 9 and 11 respectively of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as a violation of his right to be free from inhuman and degrading treatment as guaranteed by Article 3 of the ECHR.
96. Concerning the claim under Article 1 of Protocol No. 1 to the ECHR, the Panel first assessed whether UNMIK adopted adequate measures, within the limits of its power and mandate, to protect and ensure the complainant’s pension rights. The Panel noted the SRSG’s argument that “between 1999 and 2002, diplomatic efforts in the forms of a handful of ‘low-key and confidential’ encounters were held between UNMIK officials and Serbian authorities whereby the pension issue was addressed” although this time was outside of its temporal jurisdiction. The Panel stated that “is not convinced that concrete measures were taken during this period to protect the pension rights of those eligible, including the complainant, since no supporting documentation has been provided by the SRSG which clarifies the scope or outcome of such diplomatic efforts. Nonetheless, the Panel also notes that in the effort to resolve the pensions’ problem in Kosovo, in 2001, UNMIK established from scratch a new pension scheme in Kosovo, which became operational starting from 2002. The Panel notes that this system provided for basic, old age, pensions to all those above 65 years of age, irrespective of any previous employment. The monthly amount of this pension was 28 euros in 2002, 35 euros in 2003 and 45 euros from 2004 until 2008.”
97. The Panel also noted that “[c]oming to the period within the Panel’s temporal jurisdiction, starting on 23 April 2005, the Panel notes that the complainant had become eligible to receive a basic old age pension under the Kosovo pension scheme established by UNMIK since 2003, when he turned 65 years old. Indeed, according to a Supreme Court decision presented by the complainant, he has been in receipt of such a pension since May 2003. In light of the above, the Panel considers that UNMIK, within the limits of its powers and in line with its mandate under UN Security Council Resolution 1244 (1999), took all possible steps to fulfil its positive obligations under Article 1 of Protocol No. 1 to the ECHR. The Panel accordingly finds that UNMIK did not violate the complainant’s right to property.”
98. Regarding the complainant’s claims under Article 9 and 11 of the ICESCR to take appropriate steps, to the maximum of available resources, to fulfil his right to an adequate standard of living (Article 11) and social security (Article 9), the Panel first applied the general principles to the case. It noted that “the complainant was provided with social benefits under the former Yugoslav system, and specifically with a contributory pension equivalent to 180 euros per month, which he received until December 1998. The Panel also notes that, due to the political situation following the Kosovo conflict and the issuance of

UN Security Council Resolution 1244 (1999), under the UNMIK administration during the period 1999-2001, the complainant found himself with no pension benefits or any other social protection.”

99. However, the Panel also noted that “starting from 2002, UNMIK did comply with its obligation under the ICESCR, specifically under Article 9 of the Covenant, to establish a social security scheme which included contributory as well as non-contributory, old age pensions, the latter being provided by law from 65 years of age. The Panel further notes that this scheme initially did not contain provisions for those workers who had paid contributions to the former Yugoslav system, like the complainant. Nonetheless, under this scheme, the complainant received since the moment he became entitled to it in 2003 an old age pension, whose initial amount was of 35 euros per month. Coming to the period within its jurisdiction, the Panel notes that the complainant received in this period an old age pension of 45 euros monthly. Only as of September 2009, beyond the Panel’s temporal jurisdiction, the complainant started to receive a cumulative pension of 80 euros, based on his age as well as his previous contributions to the Yugoslav pension system.”
100. The Panel considered that “through the establishment of a pension scheme in Kosovo, which included both contributory and non-contributory, old age, pensions UNMIK did comply with part of its obligations under the ICESCR, and in particular under Article 9 of the Covenant. However, the Panel is concerned that the monthly amount of old pension envisaged in UNMIK Regulation No. 2005/31 and as such provided to the complainant in the period within the Panel’s jurisdiction - 45 euros per month, that is about one and half euro per day - was not adequate to ensure the complainant’s access to basic services and goods necessary for the realisation of an adequate standard of living and health. In this regard, the Panel takes note of the complainant’s statement that his pension was not even sufficient to buy the medicines he needed.”
101. The Panel also noted that “assessing the adequacy of pension and other social security benefits can be a complex and difficult exercise, especially considering that does not seem to be broad consensus among experts on what constitutes the best measure of pension adequacy. Nonetheless, the Panel gives due consideration to the assessment made by the ICESCR itself Committee in November 2008 that the minimum levels of basic and contribution-based old-age pension benefits” provided by UNMIK in Kosovo were ‘insufficient to ensure an adequate standard of living to beneficiaries and their families’...The Panel also notes that no arguments or evidence have been put forward by the SRSG that the complainant might have availed himself for the period under consideration of other sources of income or revenue to sustain a decent standard of living.”
102. The Panel further recalled that “it is a well-established principle that the minimum core obligations under the Covenant apply, and especially more so for the most vulnerable and marginalised people, even in times of resource constraints or in the aftermath of a conflict like in the case of Kosovo and rejects the SRSG’s argument in this respect. In light of the above, the Panel considers that in the particular circumstances of the case and in the absence of further information, by providing the complainant an old age pension inadequate to secure an adequate standard of living, UNMIK did not meet its core obligations under Article 9 and 11 of the ICESCR. The Panel therefore finds that these

provisions have been violated” (see HRAP, *Tomë Krasniqi*, case no. 08/10, opinion of 17 May 2016, §§ 70-74, 87-97).

### **5.8 Right to Social Security - Right to an Adequate Standard of Living - Right of Access to Court - Right to an Effective Remedy**

103. The case *Employees of the Kišnica and Novo Brdo Mines of Trepča Complex* was related to numerous matters raised by the employees of Kišnica and Novo Brdo Mines, who were forcefully removed from their workplaces in June 1999 by British KFOR, and were never allowed to return to work since then, were not paid any salary or social assistance, while their financial claims against the employer were never processed.
104. Insofar as it was declared admissible, the complainants complained that since 2006 the Moratorium declared by the Special Chamber effectively prevented them from pursuing their claims filed before the Kosovo Trust Agency (KTA). They also complained that UNMIK failed to resolve the situation of their removal from their workplaces and not receiving their wages since June 1999. In addition, those workers who did not become eligible for enrolment into the early pension scheme before 15 June 2000 also complained that UNMIK failed to provide them with any alternative means for supporting themselves and their families financially. Finally, the Panel also considered that the complainants complained about the discrimination in this situation surrounding the *de-facto* loss of work, non-payment of wages and other benefits, whereas more favourable conditions have been established for the Kosovo Albanian employees of the same enterprise.
105. In the Panel’s view, these complainants constituted alleged violations of Articles 6 (right of access to a court) and 13 (right to an effective remedy) of the ECHR, Article 1 of Protocol No. 1 to the ECHR (right to peaceful enjoyment of property), as well as Articles 2 (general prohibition of discrimination), 6 (right to work), 9 (right to a social security) and 11 (right to an adequate standard of living) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
106. First, the Panel addressed the allegations related to the complainants claims for payment of arrear salaries being unresolved since 2006. The Panel found that because of the continuous failure by the KTA (an UNMIK organ) to take the relevant steps for reorganisation of the Trepča Complex and subsequently to decide on their claims, as well as of the Moratorium on civil proceedings against the Trepča Complex, the complainants had, and still do not have, any possibility to have their civil claims against Trepča Complex adjudicated. In these circumstances, the Panel considered that the degree of access afforded under the applicable legislation was insufficient to secure the complainants’ “right to a court”, thus in this situation amounts to a violation of Article 6 § 1 of the ECHR.
107. With respect to the same issue, the Panel considered that, while the Moratorium completely denied the complainants of the possibility to have their claims resolved by any court (including the SCSC itself) or a mechanism outside the KTA procedure, no effective remedy against such a measure blocking their access to a court existed until the end of the Panel’s temporal jurisdiction. Therefore, the Panel confidently found a violation of Article 13, in conjunction with Article 6 § 1 of the ECHR.

108. In relation to the social support to the employees who were unable to benefit from the early pension scheme, respect, the Panel considered that UNMIK, as interim administrator of Trepča, as well as interim administrator of Kosovo failed to fulfil its obligations. In particular, the Panel considered that UNMIK's failure to establish a clear legal framework for the establishment, monitoring and the implementation of the stipends system reflected in the unfair exclusion of the complainants from the above mentioned scheme and in the violation of their right to social security. As the complainants were left without means to support themselves and their families, the Panel also considers that their right to an adequate standard of living was violated. Thus, the Panel found a violation of Articles 9 and 11 of the ICESCR.

## **6. Recommendations of the Panel**

109. As already mentioned (see § 37 above), from 1 January 2015 to the end of May 2016, the Panel adopted opinions on the merits of 88. Of them, in 83 cases it found violations of human rights on behalf of UNMIK, while only in five of them cases it confirmed that no such violations took place. In each of these cases where violations were found, the Panel considered some form of reparation to be necessary. This year, as in past years, the Panel found it somewhat problematic to determine what recommendations it should make in a situation where UNMIK is no longer able to have a direct impact on decisions being made in Kosovo. As noted previously, UNMIK can no longer amend legislation as necessary (or in any case, even if it amended the relevant legislation, it could no longer ensure enforcement), nor can it direct the Kosovo authorities to remedy other deficiencies identified by the Panel. This situation required the Panel to be cognisant of such limitations while making recommendations that would have a beneficial impact on the human rights situation of the affected complainants.

110. In 72 of considered 79 MMP cases, the Panel found that UNMIK had committed a violation of Article 2 of the ECHR, specifically by failing to carry out an adequate and effective investigation into the disappearance or abduction and/or killing of the complainants' close relatives. In these cases, the Panel took a wider view of reparations and recommended that UNMIK obtains assurances from EULEX that the investigations would be continued in compliance with the requirements of Article 2, that the circumstances surrounding the disappearance and killing of the victims be established and perpetrators brought to justice; that the complainant and/or other next-of-kin should be informed of such proceedings and relevant documents disclosed to them, as necessary. In addition, the Panel recommended that UNMIK publicly acknowledges, within a reasonable time, including through media, responsibility with respect to its failure to adequately investigate the disappearance and killing of the victims and make a public apology to the complainants and their families in this regard. The Panel also recommended that UNMIK pays adequate compensation to the complainant for the moral damage suffered due to UNMIK's failure to conduct an effective investigation.

111. Additionally, the Panel recommended that UNMIK takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme,

including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict. Finally, the Panel recommended that UNMIK takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring.

112. In 50 MMP cases, the Panel additionally found that UNMIK had committed a violation of Article 3 of the ECHR. Specifically, the Panel found that UNMIK's attitude towards the complainants and their families regarding the investigations into the disappearance, abduction and/or killing of their relatives contributed to the complainants and their families suffering severe distress in contravention of the right to be free from inhuman or degrading treatment. Therefore, in addition to recommending all of the reparations regarding the violations of Article 2 of the ECHR, the Panel recommended that UNMIK also pay adequate compensation to the complainants for moral damage in relation to its violations of Article 3 of the ECHR.
113. In the *Kostić* case, an MMP case where the Panel found that UNMIK committed violations of Articles 2, 3 and 5 of the ECHR (see above, §§ 85-88), concerning the violations of Article 5 of the ECHR, the Panel recommended that UNMIK also pay adequate compensation to the complainants for moral damage in relation to its violations of Article 5 of the ECHR. Additionally, the Panel recommended that, in line with the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) General Recommendation No. 19: Violence against women and the General Recommendation No. 33: On women's access to justice, UNMIK should ensure that sufficient remedies are further provided to the female complainants in the case.
114. In the case *Balaj and Others*, where the Panel found that UNMIK had violated Articles 2 and 11 of the ECHR (see above, §§ 40-52), the Panel recommended that UNMIK takes appropriate steps towards payment of adequate compensation to the complainants for the moral damage suffered due to UNMIK's violation of Articles 2 and 11 of the ECHR. Additionally, the Panel recommended that, in case the investigation into this matter is reopened, UNMIK should ensure that all necessary assistance is provided to any body with the authority to investigate this matter, in line with the Resolution of the UN General Assembly 66/93, adopted on 9 December 2011, on the *Criminal Accountability of the United Nations Officials and Experts on Mission*.
115. In cases of violations of other provisions, such as the cases *B.K.* and *Tomë Krasniqi*, the Panel found that UNMIK committed violations of Article 9 and 11 of the ICESCR (see above §§ 89-94), the Panel recommended compensation for moral damage suffered as a result of UNMIK's failure to comply with the minimum core obligations under Article 9 and 11 of the ICESCR to take appropriate steps, to the maximum of available resources, to fulfil the complainants' right to an adequate standard of living and social security.



116. In the case *N.M. and Others*, where the Panel found UNMIK had violated many of the complainants' human rights (see §§ 66-77 above), the Panel provided a number of recommendations to UNMIK including, among other things, to publicly acknowledge its failure to comply with applicable human rights standards in response to the adverse health condition caused by lead contamination in the IDP camps and the consequent harms suffered by the complainants, and to make a public apology to them and their families. The Panel also recommended that UNMIK take appropriate steps towards payment of adequate compensation for material and moral damage in relation to the finding of the violations of the human rights provisions listed in the opinion. The Panel also recommended that UNMIK take appropriate steps to ensure that UN bodies working with refugees and IDPs promote and ensure respect for international human rights standards and that the findings and recommendations of the Panel in this case are shared with such bodies, as a guarantee of non-repetition. The Panel also recommended that UNMIK take appropriate steps towards UN bodies to ensure effective distribution of information relevant to the health and well-being of people under their authority and control.
117. In addition, the Panel recommended that UNMIK urge UN bodies and relevant authorities in Kosovo to protect and promote the human rights of Roma people, especially women and children, ensuring that they have a proactive role.
118. The Panel also recommended in the case *Employees of the Kišnica and Novo Brdo Mines of Trepča Complex* (see §§ 103-108 above) that UNMIK should exercise its authority over Trepča Complex and undertake appropriate measures to ensure that the complainants eligible to receive stipends start duly benefiting from that support scheme. The Panel also considered that UNMIK should ensure that proper legal instruments regulating the payment of stipends to the workers of the Trepča Complex are developed and made public without delay. The Panel also recommended that UNMIK must endeavour, with all means available to it vis-à-vis the competent authorities in Kosovo, to obtain assurances that the claims filed by the complainants before KTA (and currently pending before the PAK) are duly processed. Finally, the Panel considered that UNMIK should take appropriate steps towards adequate compensation to the complainants for damages they incurred as a result of the above violations.

## **7. UNMIK's Reactions to the Panel's Recommendations**

119. In every complaint to date in which the Panel has found a violation, the Panel has recommended that UNMIK takes immediate and effective measures to implement its recommendations and to inform the complainant and the Panel about further developments in the case. However, the Panel is disappointed to report that UNMIK has followed almost none of the Panel's recommendations.
120. The Panel notes that Section 17.3 of UNMIK Regulation No. 2006/12 provides that the SRSG shall have exclusive authority and discretion to decide whether to act on the findings of the Panel, while Section 17.4 requires that the decisions of the SRSG "shall be published promptly in English, Albanian and Serbian in a manner that ensure broad dissemination and accessibility." The Panel notes that UNMIK has continued to make an effort to publish more responses to the Panel's opinions than in previous years. Nevertheless, the nature of

UNMIK's responses, combined with UNMIK's failure to achieve any practical reparation or benefit for the complainants, indicates a lack of effective engagement by the SRSG regarding the substantive work of the Panel. In fact, for the past three years, the Panel has chronicled its disappointment in the fact that the SRSG has yet to follow the three main recommendations that the Panel made to the SRSG in the MMP opinions where UNMIK had committed violations of Article 2 of the ECHR. Specifically, despite the Panel recommending to the SRSG 72 (!!!) times that UNMIK urge the competent authorities that the investigations be continued in compliance with the requirements of Article 2, that the SRSG make a public apology to the complainants and their families for the ineffective investigation and that the SRSG take appropriate steps toward the realisation of a full and comprehensive reparation programme, including restitution, compensation, rehabilitation and satisfaction, these things have never been done.

121. Now that the Panel has concluded its mandate, putting an end to an eight-year process of issuing admissibility decisions, opinions, and recommendations, the Panel is forced to proclaim this process a total failure. UNMIK remains as unaccountable now for the human rights violations that it committed as it was in 2004 when the Venice Commission proposed to establish a mechanism to bring some oversight to UNMIK's compliance with human rights standards. Due to UNMIK's unwillingness to follow any of the Panel's recommendations and UNMIK's general intransigence, the HRAP process has obtained no redress for the complainants. As such, they have been victimized twice by UNMIK: by the original human rights violations committed against them and again by putting their hope and trust into this process. For many years, the Panel has exhorted UNMIK and the United Nations to undertake some beneficial activity on behalf of the complainants before the HRAP's mandate concluded; shamefully, this did not occur. Now, the Panel can only wonder what might have been possible if UNMIK had undertaken to collaborate with the Panel in good faith, instead of turning this process into a human rights minstrel show. For its part, the Panel apologizes profusely to the complainants for its role in this sham.

## 8. Annexes

### *Annex A*

**UNITED NATIONS**  
United Nations Interim  
Administration Mission in  
Kosovo



UNMIK

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

UNMIK/REG/2006/12  
23 March 2006

## **REGULATION NO. 2006/12**

### **ON THE ESTABLISHMENT OF THE HUMAN RIGHTS ADVISORY PANEL**

The Special Representative of the Secretary-General,

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

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

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

Hereby promulgates the following Regulation:

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

#### Section 1

#### Establishment of the Human Rights Advisory Panel

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

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

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

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

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

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

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

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

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

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

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

#### Section 2

#### Temporal and Territorial Jurisdiction

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

#### Section 3

#### Admissibility Criteria

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

3.2 The Advisory Panel shall not deal with any complaint that

(a) Is anonymous; or

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

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

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

### Section 4 Seat and Composition

4.1 The Advisory Panel shall have its seat in Pristina.

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

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

### Section 5 Appointment of the Members

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

5.2 The members shall be appointed for a term of two years<sup>12</sup>. The appointment may be renewed for further terms of two years.

### Section 6 Oath or Solemn Declaration

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

"I do hereby solemnly declare that:

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

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

---

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

Freedoms and its Protocols, the International Covenant on Civil and Political Rights and its Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination Against Women, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.”

Section 7  
Immunity and Inviolability

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

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

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

Section 8  
Financial and Human Resources

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

Section 9  
Secretariat

A full-time secretariat shall service the Advisory Panel.

**CHAPTER 3: Procedure before the Human Rights Advisory Panel**

Section 10  
Submission of complaints and *Ex Officio* Representatives

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

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

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

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

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

### Section 11 Written Submissions

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

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

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

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

### Section 12 Confidentiality of Communications

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

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

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

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

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

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

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

#### Section 14 Oral hearings

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

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

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

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

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

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

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

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

#### Section 17 Findings and Recommendations of the Advisory Panel

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

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



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

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

Section 18  
Rules of Procedure

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

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

**CHAPTER 4: Final Provisions**

Section 19  
Implementation

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

Section 20  
Applicable Law

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

Section 21  
Entry into force

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

Søren Jessen-Petersen  
Special Representative of the Secretary-General

*Annex B*

**UNITED NATIONS**  
United Nations Interim  
Administration Mission in  
Kosovo



*UNMIK*

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

UNMIK/DIR/2009/1  
17 October 2009

**ADMINISTRATIVE DIRECTION NO. 2009/1**

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

The Special Representative of the Secretary-General,

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

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

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

Hereby promulgates the following Administrative Direction:

Section 1  
Public Hearings

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

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

questions of the parties, or their representatives, which clarify the factual basis of the complaint and are necessary for the Advisory Panel to fully assess the human rights allegations before it.

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

## Section 2 Issues of Admissibility

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

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

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

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

## Section 3 Appointment and Resignation of Panel Members

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

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

Section 4  
Publications of the Advisory Panel

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

Section 5  
Cut-off Date for Submission of Complaints

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

Section 6  
Entry into Force

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

Lamberto Zannier  
Special Representative of the Secretary-General

## Annex C

## HRAP Statistical Table

HRAP Caseload, Communications & Determinations (as of 24 May 2016)												
Caseload	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Received	3	12	69	353	90 <sup>1</sup>	n/a	n/a	n/a	n/a	n/a	n/a	527
Closed	0	0	18	11	35 <sup>2</sup>	98	95	85	97	79	9	527
Pending	3	15	66	408	463	365	270	185	88	9	0	0
Determinations by Type	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Total	0	0	34	23	79	213	270	91	103	79	10	902
Admissibility Decisions	0	0	30	19	51	164	238	10	3	-	-	515
Partial Admissibility Decisions	0	0	2	0	1	0	0	-	-	-	-	3
Strike off the List	0	0	0	3	5	2	6	-	-	-	-	16
Opinions on the Merits	0	0	1	0	22	46	23	79	96	79	9	355
Partial Opinions on the Merits	0	0	0	1	0	0	0	-	-	-	-	1
Requests for Revision/Reopening	0	0	1	0	0	1	3	2	4	-	1	12
Determinations by Finding	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Decisions	Admissible	0	0	11	2	16	63	112	2	-	-	206
	Partially Admissible	0	0	2	9	25	51	60	2	2	-	151 <sup>3</sup>
	Inadmissible	0	0	17	8	10	50	66	6	1	-	158
Opinions: Violation	0	0	1	0	21	45	21	76	88	74	9	335
Opinions: No Violation	0	0	0	1	1	1	2	3	8	5	-	21 <sup>4</sup>
Requests for Revision	Refused	0	0	1	0	0	1	1	2	4	-	10
	Granted	0	0	0	0	0	0	2	-	-	-	2

<sup>1</sup> Following the Panel's review, case no. 25/10 was split in two cases (new case no. 90/10)

<sup>2</sup> Two cases (no. 04/07 and 26/08) declared inadmissible in 2010, have been re-opened by the Panel in 2012.

<sup>3</sup> Three of them are "partial admissibility" decisions.

<sup>4</sup> One of them is a partial opinion on the merits.

*Annex D***HRAP Decisions and Opinions Issued in 2015 and 2016****Opinions Violation:**

1. Marković, Spasa, no. 227/09, opinion of 21 January 2015
2. Ničić, Blagica, no. 228/09, opinion of 21 January 2015
3. Kuzmanović, Bilijana, no. 262/09, opinion of 21 January 2015
4. Ilić, Verica, no. 303/09, opinion of 23 January 2015
5. Mon Balaj and Others, no. 04/07, opinion of 26 February 2015
6. Vitošević, Zvezdan, no. 116/09, opinion of 27 February 2015
7. Janićević, Gordana, no. 216/09, opinion of 27 February 2015
8. Shala, Raza, no. 234/09, opinion of 27 February 2015
9. Lazić, Bojana, no. 261/09, opinion of 26 February 2015
10. Radnić, Ruža, no. 340/09, opinion of 27 February 2015
11. Pekić, Verica, no. 15/10, opinion of 17 February 2015
12. Jovanović, Sava, no. 213/09, opinion of 20 March 2015
13. Ristić, Vlajka, no. 269/09, opinion of 19 March 2015
14. Grujić, Nebojša, no. 287/09, opinion of 19 March 2015
15. Stanković, Zorica, no. 304/09, opinion of 19 March 2015
16. Š. D., no. 244/09, opinion of 24 April 2015
17. Vuksanović, Milijana, no. 270/09, opinion of 22 April 2015
18. Bulatović, Mira, no. 275/09, opinion of 22 April 2015
19. Patrnogić and Others, no. 293/09, opinion of 22 April 2015
20. Maslar, Budimir, no. 333/09, opinion of 24 April 2015
21. Pantović, Radomir, no. 239/09, opinion of 13 May 2015
22. Čelić, Vesna, no. 260/09, opinion of 18 May 2015
23. Vostić, Momčilo, no. 279/09, opinion of 13 May 2015
24. Jelić, Dragomir, no. 288/09, opinion of 13 May 2015
25. Duričić, Rodoje and Savic, Miljana, nos 104/09 and 159/09, opinion of 24 June 2015
26. Milenković, Rajko, no. 255/09, opinion of 26 June 2015
27. Ivković, Nedeljko, no. 281/09, opinion of 24 June 2015
28. Ljumović, Suzana, no. 285/09, opinion of 24 June 2015
29. Trifunović, Dušanka, no.297/09, opinion of 25 June 2015
30. Marković, Ivica, no. 06/10, opinion of 5 August 2015
31. Mirić, Budimirka and Others, nos 68/09, 83/09, 235/09, 236/09, 256/09, opinion of 10 September 2015
32. Jošanović, Miluša, no. 124/09, opinion of 11 September 2015
33. Ristić, Vekoslav and Ristić Stanoje, nos 224/09, 225/09, 243/09 and 344/09, opinion of 11 September 2015
34. Škripac, Vera, no. 266/09, opinion of 11 September 2015
35. Marković, Ivica, no. 290/09, opinion of 10 September 2015
36. Kostić and Others, nos 111/09, 117/09, 134/09, 178/09, 179/09, 180/09, 230/09, 231/09, 232/09, 240/09, 241/09, 253/09, 254/09, 259/09, 263/09, 284/09, 286/09, opinion of 23 October 2015
37. Milenković, Lidija, nos. 153-181/09, opinion of 23 October 2015
38. Simović, Stevan, no. 246/09, opinion of 24 October 2015

39. Folić, Žaklina and Others, nos 58/09, 59/09, 60/09, 61/09, 62/09, 215/09 and 217/09, opinion of 13 November 2015
40. Ristić, Zorka, no. 132/09, opinion of 13 November 2015
41. K.B., no. 85/10, opinion of 13 November 2015
42. Aritonović, Ljubomir, no. 136/09, opinion of 11 December 2015
43. Joksimović, Predrag, no. 283/09, opinion of 11 December 2015
44. Janjić, Ranko, no. 220/09, opinion of 29 January 2016
45. Bucalo and Others, nos 148/09, 150/09, 151/09 and 161/09, opinion of 4 February 2016
46. N.M. and Others, no. 26/08, opinion of 26 February 2016
47. Mirić, Svetislav, no. 342/09, opinion of 16 March 2016
48. Krasniqi, Tomë, no. 08/10, opinion of 17 May 2016
49. Employees of the Kišnica and Novo Brdo Mines of Trepča Complex, no. 81/10, opinion of 18 May 2016

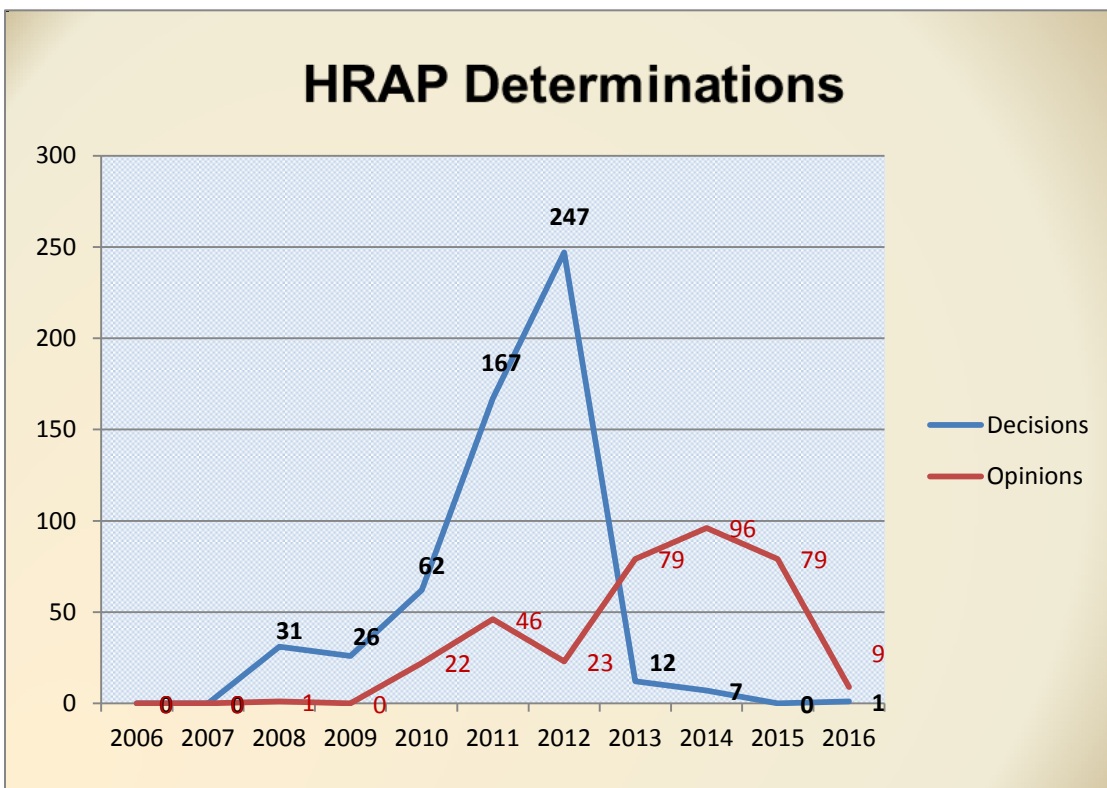
**Opinions No Violation:**

1. S.C., V.F., M.O., O.L., nos. 13/09, 93/09, 267/09, 302/09, opinion of 22 April 2015
2. Jovičić, Petar, no. 233/09, opinion of 24 June 2015

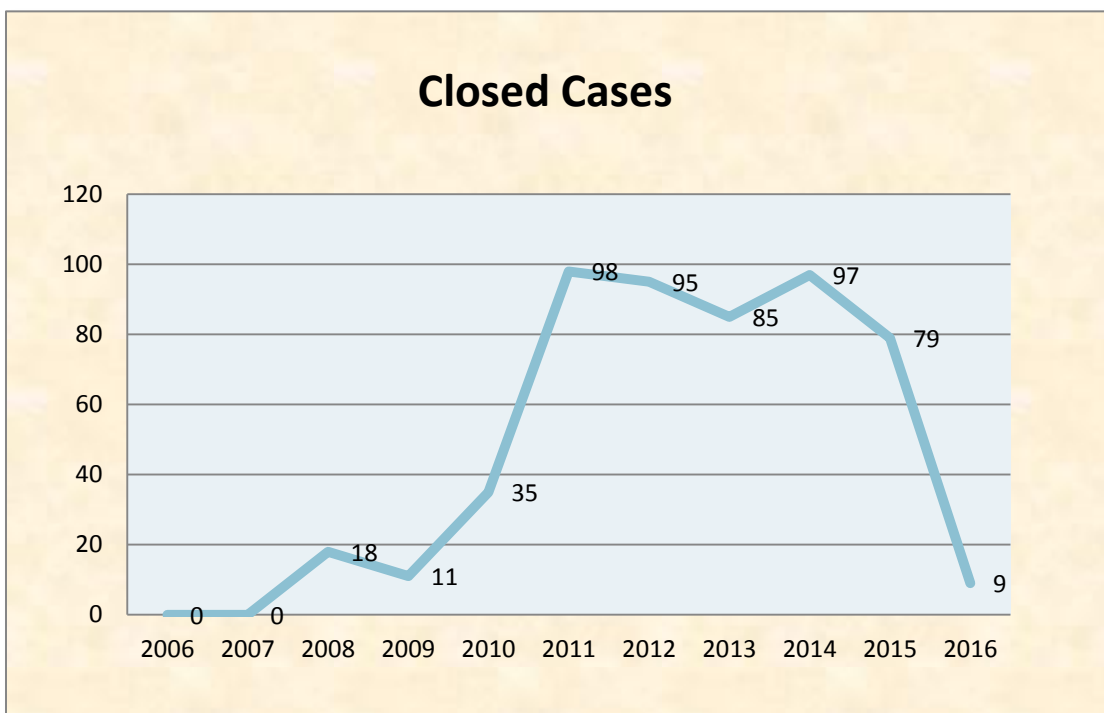
**Decision on request to re-open Proceedings:**

1. Kostić and Others, nos. 111/09 and others, decision of 26 Feb 2016

Annex E



Annex F





**Annex G****ABBREVIATIONS AND ACRONYMS**

**AI** – Amnesty International  
**DOJ** - Department of Justice  
**ECHR** - European Convention on Human Rights  
**ECtHR** - European Court of Human Rights  
**EULEX** - European Union Rule of Law Mission in Kosovo  
**HLC**- Humanitarian Law Centre  
**HRAP** - Human Rights Advisory Panel  
**ICESCR** – International Covenant on Economic Social and Cultural Rights  
**ICMP**- International Commission on Missing Persons  
**ICRC** - International Committee of the Red Cross  
**ICTY**- International Criminal tribunal for the former Yugoslavia  
**KFOR** - International Security Force (commonly known as Kosovo Force)  
**KLA** - Kosovo Liberation Army  
**KTA**- Kosovo Trust Agency  
**MMP** - Missing/Murdered Person  
**SRSG** - Special Representative of the Secretary-General  
**UN** - United Nations  
**UNMIK** - United Nations Interim Administration Mission in Kosovo