

HUMAN RIGHTS ADVISORY PANEL

RULES OF PROCEDURE¹

Chapter 1. General provisions

Rule 1. Aim of the present Rules

The present rules aim at setting the rules to be followed by the Human Rights Advisory Panel and those appearing before it, in procedures covered by UNMIK Regulation No. 2006/12 of 23 March 2006 on the establishment of the Human Rights Advisory Panel.

Rule 2. Definitions²

For the purposes of the present rules, unless the context otherwise requires:

- a. the term “Regulation No. 2006/12” means UNMIK Regulation No. 2006/12 of 23 March 2006 on the establishment of the Human Rights Advisory Panel;
- a *bis*. the term “Administrative Direction No. 2009/1” means Administrative Direction No. 2009/1 implementing UNMIK Regulation No. 2006/12 on the establishment of the Human Rights Advisory Panel;
- b. the term “Panel” means the Human Rights Advisory Panel;
- c. the term “complainant” means any person or group of individuals who has submitted a complaint or on whose behalf a complaint has been submitted;
- d. the term “applicant” means the complainant who has submitted a complaint himself or herself, or the family member, the non-governmental organisation or the trade union that has submitted a complaint on behalf of a complainant;
- e. the term “representative” means the person who represents a party in the proceedings before the Panel, according to Rule 17.

Chapter 2. Organisation of the Panel

Rule 3. Members of the Panel

Members of the Panel shall serve only in their personal capacity.

Rule 4. Order of precedence³

1. Members of the Panel shall take precedence after the Presiding Member according to the length of time they have been in office.
2. Members having the same length of time in office shall take precedence according to age.
3. Re-appointed members shall take precedence having regard to the duration of their previous terms of office.

¹ Adopted by the Panel on 5 February 2008. Amended on 11 September 2009, 21 November 2009 and 12 February 2010.

² Point a *bis* inserted on 12 February 2010.

³ The word “President” in § 1 replaced by “Presiding Member” on 12 February 2010.

*Rule 5. Resignation*⁴

Resignation of a member shall be notified to the Presiding Member of the Panel who shall transmit it to the Special Representative of the Secretary-General.

*Rule 6. Election of the Presiding Member*⁵

The Panel shall elect its Presiding Member, for a term of office of one year. He or she may be re-elected.

*Rule 7. Functions of the Presiding Member*⁶

The Presiding Member shall direct the work of the Panel.

*Rule 8. Replacement of the Presiding Member*⁷

If the Presiding Member is unable to carry out his or her duties, or if his or her office is vacant, the duties of Presiding Member shall be carried out by another member according to the order of precedence laid down in Rule 4.

*Rule 9. Secretariat*⁸

1. The Secretariat shall consist of the Executive Officer and other professional and administrative staff.
2. The Executive Officer shall, under the direction of the Presiding Member, be responsible for the work of the Secretariat and, in particular:
 - a. shall assist the Panel and its members in the fulfilment of their duties;
 - b. shall be the channel for all communications concerning the Panel;
 - c. shall have custody of the archives of the Panel.

Chapter 3. Functioning of the Panel

Rule 10. Seat of the Panel

1. In accordance with Section 4.1 of Regulation No. 2006/12, the seat of the Panel shall be in Pristina.
2. The Panel may decide to perform its functions elsewhere if it thinks fit.
3. The Panel may decide, at any stage of the examination of a complaint, that it is necessary that an investigation or any other function be carried out elsewhere by it or one or more of its members.

*Rule 11. Sessions of the Panel*⁹

1. The Panel shall determine the dates of its sessions.
2. Members who are prevented by illness or other serious reason from attending all or part of any session of the Panel or from fulfilling any other duty shall, as soon as possible, give notice thereof to the Presiding Member.

⁴ The word "President" replaced by "Presiding Member" on 12 February 2010.

⁵ The word "President" in the heading and the text replaced by "Presiding Member" on 12 February 2010.

⁶ The word "President" in the heading and the text replaced by "Presiding Member" on 12 February 2010.

⁷ The word "President" in the heading and the text replaced by "Presiding Member" on 12 February 2010.

⁸ The word "President" in § 2 replaced by "Presiding Member" on 12 February 2010.

⁹ The word "President" in § 2 replaced by "Presiding Member" on 12 February 2010.

Rule 12. Withdrawal

1. A member of the Panel may not take part in the consideration of any case if:
 - a. he or she has a personal interest in the case;
 - b. he or she has expressed opinions publicly, through the media, in writing, through his or her public actions or otherwise, that are objectively capable of adversely affecting his or her impartiality;
 - c. for any other reason, his or her independence or impartiality may legitimately be called into doubt.
2. In the event of any doubt as to the existence of one of the grounds referred to in paragraph 1, that issue shall be decided by the Panel, without the member concerned being present.

*Rule 13. Deliberations*¹⁰

1. The Panel shall deliberate in private. Its deliberations shall remain secret. Only the Executive Officer, members of the Secretariat, interpreters, and persons providing technical or secretarial assistance to the Panel may be present at its meetings, unless the Panel decides otherwise.
2. Where it is necessary for the Panel to decide a point or procedure or any other question other than at a scheduled meeting of the Panel, the Presiding Member may direct that the deliberation may take place through electronic means.

*Rule 14. Quorum*¹¹

1. The Panel can decide only if all members are present or, in the case of Rule 13 § 2, if all members take part in the deliberation by electronic means.
2. In the case of the withdrawal of a member or his or her absence in the sense of Rule 11 § 2, the Panel can decide with the other two members being present or taking part in the deliberation by electronic means.

*Rule 15. Voting*¹²

The decisions of the Panel shall be taken by a majority of the members taking part in the vote. Abstentions shall not be allowed in final votes on the admissibility and merits of cases. In the event of a tie, the Presiding Member shall have the casting vote.

Chapter 4. Procedure

A. General rules

Rule 16. Languages

1. The official languages of the Panel shall be Albanian, Serbian and English.
2. The authentic version of the decisions on admissibility and the opinions on the merits shall be the English one. The English version shall be translated in Albanian and Serbian.

¹⁰ The word “President” in § 2 replaced by “Presiding Member” on 12 February 2010.

¹¹ The words “the resignation or” in § 2 omitted, and the words “the other” inserted between the words “with” and “two members” in § 2 on 12 February 2010.

¹² The word “President” replaced by “Presiding Member” on 12 February 2010.

Rule 17. Representation of the parties

1. Complainants and persons acting on their behalf can be represented before the Panel by attorneys or other representatives of their choice.
2. UNMIK shall be represented before the Panel by the Special Representative of the Secretary General or by an agent appointed by him.

Rule 18. Participation of an Amicus Curiae and the Ombudsperson

1. The Panel may, in accordance with Section 13 of Regulation No. 2006/12, invite an amicus curiae or the Ombudsman to submit written observations.
2. Such invitation may be extended by the Panel acting on its own initiative, or upon a written request by a person or an institution willing to participate as amicus curiae, or by the Ombudsperson.

Rule 19. Action in specific cases

1. The Panel may, of its own motion or at the request of a party, take any action which it considers expedient or necessary for the proper performance of its duties under Regulation No. 2006/12.
2. The Panel may delegate one or more of its members to take any such action in its name, and in particular to hear witnesses or experts, to examine documents or to visit any locality. Such member or members shall duly report to the Panel.

Rule 20. Joinder of complaints

The Panel may, if it considers in the interest of the proper conduct of the proceedings, order the joinder of two or more complaints.

Rule 21. Order of processing of complaints

1. The Panel shall deal with complaints in the order in which they become ready for examination.
2. The Panel may, however, decide to give precedence to a particular complaint.

*Rule 22. Provisional measures*¹³

1. The Panel or, where appropriate, its Presiding Member may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
2. The Panel may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.

Rule 23. Time-limits

In accordance with Section 11.3 of Regulation No. 2006/12, and unless extended by the Panel, the time-limit for UNMIK for a response on the merits of a complaint declared admissible shall be twenty days of the receipt of the complaint by the Special Representative of the Secretary-General. All other time-limits shall be fixed by the Panel, for any information, observations or comments requested from the parties.

¹³ The word "President" in § 1 replaced by "Presiding Member" on 12 February 2010.

Rule 24. Costs

In accordance with Section 10.5 of Regulation No. 2006/12, there shall be no charge for the submission of a complaint.

B. Complaints

Rule 25. Signature of complaints

1. Any complaint submitted under Section 10.2 or 10.3 of Regulation No. 2006/12 shall be submitted in writing and shall be signed by the applicant or by the applicant's representative.
2. Where a complaint is submitted by a legal person or by a group of individuals, it shall be signed by those persons competent to represent such legal person or group. The Panel shall determine any question as to whether the persons who have signed a complaint are competent to do so.
3. Where an applicant is represented in accordance with Rule 17 § 1, a power of attorney or written authority shall be supplied by his or her representative.

Rule 26. Content of complaints

1. A complaint shall set out:
 - a. the identity of the applicant and of the complainant, if different from the applicant, including, where appropriate, the name, date of birth, occupation and address of the person concerned;
 - b. the name, occupation and address of the representative, if any;
 - c. a statement of all relevant facts;
 - d. a succinct statement of compliance with the admissibility criteria laid down in Section 3 of Regulation No. 2006/12;
 - e. a succinct statement of the alleged violations of the instruments mentioned in Section 1.2 of Regulation No. 2006/12;
 - f. the reparation sought from UNMIK.
2. The applicant may attach any documentary evidence to the complaint. The applicant shall in any event submit copies of decisions, whether judicial or not, relating to the object of the complaint or showing that the admissibility criteria have been satisfied.
3. The applicant can make use of a standard form provided by the Secretariat.

Rule 27. Registration of complaints

The Executive Officer shall keep a register of the complaints, in which shall be entered the date of registration and the date of termination of the proceedings.

C. Examination of admissibility

Rule 28. Designation of a rapporteur¹⁴

1. The Presiding Member shall designate a member as rapporteur, who shall examine the complaint.
2. In their examination of complaints rapporteurs
 - a. may request the parties to submit, within a specified time, any factual information, documents or other material which they consider to be relevant;

¹⁴ The word "President" in § 1 replaced by "Presiding Member" on 12 February 2010.

- b. shall submit such reports, drafts and other documents as may assist the Panel in carrying out its functions.

Rule 29. Inadmissibility decision without communication of the complaint to UNMIK

The Panel may at once declare that the complaint is inadmissible or strike it out.

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

The Panel may also at once declare that the complaint is admissible, where the complaint raises questions which are substantially the same as those that have been raised in other complaints, which have already been declared admissible by the Panel, and where no new admissibility issue arises.¹⁵

*Rule 30. Communication of the complaint to UNMIK and written proceedings*¹⁶

1. Alternatively, the Panel may decide to
 - a. request the parties to submit any factual information, documents or other material considered by the Panel to be relevant;
 - b. communicate the complaint to the Special Representative of the Secretary-General and invite UNMIK to submit written observations on the admissibility of the complaint, including on the question whether the complaint is manifestly ill-founded, and, upon receipt thereof, invite the complainant to submit observations in reply;
 - c. invite the parties to submit further observations in writing.
2. Before taking its decision on the admissibility, the Panel may decide, either at the request of a party or of its own motion, to hold a hearing if it considers that the discharge of its functions under Regulation No. 2006/12 so requires.

*Rule 31. Plea of inadmissibility*¹⁷

Any plea of inadmissibility should in principle be raised by UNMIK in its written observations on the admissibility of the complaint submitted as provided in Rule 30 § 1 b.

*Rule 31bis. Admissibility issue linked to the merits*¹⁸

Where the Panel determines that an admissibility issue is closely linked to the merits of the complaint, it may join the issue to the merits. In that case, provided that there is no other obstacle to the admissibility, it shall declare the complaint admissible.

Rule 32. Decision on admissibility

1. The decision of the Panel shall contain a brief description of the facts, as well as the reasons in points of law. It shall state whether it was taken unanimously or by a majority.

¹⁵ Rule 29bis inserted on 11 September 2009.

¹⁶ The words “give notice of” in § 1 replaced by “communicate”, the words “on the complaint” in § 1 replaced by “on the admissibility of the complaint, including on the question whether the complaint is manifestly ill-founded,”, and the second sentence of § 2 omitted on 12 February 2010.

¹⁷ The words “must, in so far as its character and the circumstances permit,” replaced by “should in principle”, the words “or oral” omitted, and the words “Rule 30” replaced by “Rule 30 § 1 b” on 12 February 2010.

¹⁸ Rule 31bis inserted on 12 February 2010.

2. Any member who has taken part in the consideration of the case shall be entitled to annex to the decision of the Panel either a separate opinion, concurring with or dissenting from that decision, or a bare statement of dissent.

*Rule 33. Admissibility issue raised or arising after the complaint has been declared admissible*¹⁹

1. In the event that a new admissibility issue is raised or arises after the complaint has been declared admissible, the Panel shall, in accordance with Section 2.3 of Administrative Direction No. 2009/1, suspend its deliberation on the merits and determine the admissibility issue by a separate decision.

2. However, where it is clear that the Special Representative of the Secretary-General has already fully discussed the merits of the complaint, the Panel may at once adopt its opinion on the merits, in which it then includes its determination of the admissibility issue.

D. Examination of the merits

*Rule 34. Proceedings after the admission of a complaint*²⁰

1. Once a complaint has been declared admissible, or following a confirmation of the admissibility of the complaint upon the examination of a new admissibility issue under Rule 33 § 1, the Panel shall invite the Special Representative of the Secretary-General to comment or to further comment on the merits. It may invite the complainant to submit further evidence and written observations, including observations on the comments made by the Special Representative of the Secretary-General.

2. The Panel may decide, either at the request of a party or of its own motion, to hold a hearing on the merits if it considers that the discharge of its functions under Regulation No. 2006/12 so requires.

3. The Panel shall, where appropriate, fix the written and oral procedure.

Rule 35. Opinion on the merits

1. In accordance with Section 17.1 of Regulation No. 2006/12, the Panel shall adopt an opinion containing its findings as to whether there has been a breach of the human rights of the complainant.

2. In accordance with Section 17.1 of Regulation No. 2006/12, the Panel may, when it considers necessary, make recommendations based on its findings. These recommendations may relate, in particular, to the reparation measures that are to be taken following the finding of a violation of the human rights of the complainant.

Rule 36. Form of the opinion

1. The opinion shall contain:

- a. the name of the members of the Panel who have participated in the adoption of the opinion, and the name of the Executive Officer of the Secretariat;
- b. the date on which it was adopted;
- c. a description of the parties and their representatives;
- d. an account of the procedure followed;
- e. the facts of the case;
- f. a summary of the submissions of the parties;

¹⁹ Rule 33 replaced on 12 February 2010.

²⁰ § 1 replaced on 12 February 2010.

- g. the reasons in points of law;
 - h. the operative provisions;
 - i. the number of members constituting the majority.
2. Any member who has taken part in the consideration of the case shall be entitled to annex to the opinion of the Panel either a separate opinion, concurring with or dissenting from that opinion, or a bare statement of dissent.

E. Evidence

Rule 37. Evidence upon which the decisions and opinions are based

The Panel shall base its decisions and opinions on any evidence which it considers relevant to the complaint, including evidence collected on its own initiative.

Rule 38. Submission of additional evidence by the parties

The parties may submit additional evidence at any point during the proceedings, until the Panel has finished the consideration of the case. The Panel may, however, when necessary for the proper performance of its duties under Regulation No. 2006/12, set a time-limit for the submission of such evidence.

Rule 39. Investigative measures

1. The Panel may, at the request of a party or of its own motion, adopt any investigative measure which it considers capable of clarifying the facts of the case.
2. The Panel may, *inter alia*, in accordance with Section 15.1 of Regulation No. 2006/12, request the appearance of any person, including UNMIK personnel, as a witness or an expert or in any other capacity, or the submission of any documents, including files and documents in the possession of UNMIK, which may be relevant to the complaint. 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 and acted upon by him in accordance with Section 15.3 of Regulation No. 2006/12.

Rule 39bis. Requests for restrictions on disclosure of evidence²¹

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

Rule 39ter. Confidentiality of evidence collected by the Panel on its own initiative²²

²¹ Rule 39bis inserted on 21 November 2009.

If the Panel receives evidence from a third party on the condition of confidentiality, it shall not disclose that evidence to any of the parties. It will be possible for the Panel to base its determinations on evidence received in confidence.

F. Hearings

Rule 40. Public character of the hearings

In accordance with Section 16.1 of Regulation No. 2006/12, hearings shall be in public, unless the Panel in exceptional circumstances decides otherwise.

*Rule 41. Conduct of hearings*²³

1. The Presiding Member shall organise and direct the hearings.
2. Any member of the Panel may put questions to any person appearing before the Panel.

G. Signature, delivery, notification and publication of decisions and opinions

*Rule 42. Delivery of decisions and opinions*²⁴

Decisions and opinions shall be delivered in writing.

*Rule 43. Signature of decisions and opinions*²⁵

Decisions and opinions shall be signed by the Presiding Member and the Executive Officer of the Secretariat.

Rule 44. Notification of decisions and opinions

Decisions and opinions shall be notified to the parties.

Rule 45. Publication of decisions and opinions

Decisions and, in accordance with Section 17.2 of Regulation No. 2006/12, opinions shall be published promptly in English, Albanian and Serbian.

H. Revision and rectification of errors

Rule 46. Requests for revision of a decision or an opinion

1. A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when the decision or the opinion was delivered, was unknown to the Panel and could not reasonably have been known to that party, request the Panel, within a period of one month after that party acquired knowledge of the fact, to revise that decision or opinion.

²² Rule 39*ter* inserted on 21 November 2009.

²³ § 1 replaced on 12 February 2010.

²⁴ Original Rule 43 renumbered on 12 February 2010.

²⁵ The word “President” in the original Rule 42 replaced by “Presiding Member”, and original Rule 42 renumbered on 12 February 2010.

2. The request shall mention the decision or the opinion of which revision is requested and shall contain the information necessary to show that the conditions laid down in paragraph 1 have been complied with. It shall be accompanied by a copy of all supporting documents.
3. The Panel may refuse the request on the ground that there is no reason to warrant considering it.
4. If the Panel does not refuse the request, it shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the Panel. The Panel shall also fix the date of the hearing should the Panel decide to hold one.

Rule 47. Rectification of errors and editorial revision

1. Without prejudice to Rule 46, the Panel may, of its own motion or at the request of a party made within one month of the delivery of a decision or an opinion, rectify clerical errors, errors in calculation or obvious mistakes.
2. Decisions and opinions are subject to editorial revision.

I. Derogation

Rule 48. Derogation in individual cases

The provisions of this chapter shall not prevent the Panel from derogating from them for the consideration of a particular case, where necessary for the proper performance of its duties under Regulation No. 2006/12.

Chapter 5. Final provisions

Rule 49. Questions not governed by the Rules of Procedure

Questions not governed by the present Rules of Procedure shall be settled by the Panel, which shall base its ruling on the provisions of Regulation No. 2006/12 and, as much as possible, on the Rules of Court of the European Court of Human Rights.

Rule 50. Language versions of the Rules of Procedure

The present Rules of Procedure are adopted in English, which text shall constitute the authentic version. The text shall be translated in Albanian and Serbian.