

**OPINION**

**Date of adoption: 13 November 2015**

**Case No. 85/10**

**B. K.**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 13 November 2015,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

Having considered the aforementioned complaint, introduced pursuant to Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel,

Having deliberated, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 30 March 2010 and registered on 22 April 2010.
3. On 29 December 2010, the complainant submitted further information to the Panel.
4. On 16 March 2012, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK’s comments on the admissibility of the complaint. The SRSG submitted UNMIK’s response on 21 May 2012.
5. On 14 May 2012, the Panel communicated additional documentation to the SRSG and invited UNMIK to provide additional comments on admissibility in light of the documentation received. On 21 May 2012, the Panel received UNMIK’s response.
6. On 22 August 2012, the Panel declared the complaint admissible.
7. On 7 September 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaint. The SRSG provided UNMIK’s response on 31 October 2012.
8. On 9 November 2012, the Panel forwarded UNMIK’s response to the complainant, requesting him to provide additional comments if he wished to do so.
9. On 6 December 2012, the Panel received the complainant’s additional comments. Further comments from the complainant were received by the Panel on 17 January 2013.
10. **THE FACTS**

*Background: policy and legal framework for the readmission and reintegration of repatriated persons in Kosovo under UNMIK*

1. During the early 1990s many people living in the then Socialist Federal Republic of Yugoslavia, including persons from Kosovo, left or fled the territory, many as a consequence of war and hostilities. As the situation in Kosovo stabilised, those host countries that had received people from Kosovo during the conflict, progressively requested authorities in Kosovo to accept returnees.
2. After 1999 UNMIK, mandated by the UN Security Council Resolution No. 1244 (1999), among other things, to establish “a secure environment in which refugees and displaced persons can return home in safety”, was the main institution managing the readmission of repatriated persons in Kosovo, including those involuntarily repatriated. Starting from 2006, in the context of the gradual transfer of competencies to the Provisional Institutions for the Self-Government (PISG) of Kosovo, UNMIK supported the PISG in developing a policy and strategy to facilitate the readmission and reintegration of repatriated persons into Kosovo society.
3. On 28 November 2007, UNMIK SRSG approved a Readmission Policy introducing “the strategy and procedures in Kosovo in handling admissions of persons originating from Kosovo and residing without legal status in host countries”, prepared jointly by UNMIK and the PISG and, as such, adopted by the latter on 31 October 2007. The related Strategy for Reintegration of Repatriated Persons in Kosovo had been approved by the Kosovo Government on 10 October 2007[[1]](#footnote-1).
4. Concerning readmission procedures, the Readmission Policy specified that, according to UNMIK Regulation No. 2001/19 of 15 May 2001 *on the Executive Branch of the Provisional Institutions of Self-Government of Kosovo*, UNMIK retained “reserved powers with reference to foreign affairs and border control related issues, including readmission of persons originating from Kosovo” and that the “full transfer of these competencies to the PISG “will not be complete until the final status of Kosovo is decided”. Therefore, according to the Readmission Policy, “during this transition period, while the overall competencies remain with UNMIK-[Office for Communities, Returns and Minorities], PISG [Ministry of Internal Affairs] will be handed over the functional/operational responsibility for the implementation of the aforementioned competencies”. The Readmission Policy further clarified that, till the full transfer of competencies to the PISG, UNMIK would be “the first point of contact” for host countries forwarding requests for readmission, which should contain information such as the details of persons to be repatriated and indication of special arrangements that the concerned person might need, including when necessary “information on medical conditions”[[2]](#footnote-2).
5. The Readmission Policy stated that the PISG/Kosovo authorities would endeavour to build “suitable conditions” for persons facing repatriation from host countries, including through means to facilitate their reintegration (i.e. access to temporary accommodation and long-term housing, health care, education and employment) as specified in the Strategy.
6. Within the PISG, the Ministry of Internal Affairs (MIA) was entrusted with the leading role in implementing the Readmission Policy, including with the responsibility to manage the involuntary repatriations and coordinate with other line Ministries and with municipalities to develop and implement suitable return policies. The MIA had also the responsibility to follow and coordinate readmission procedure in such a way that “vulnerable groups receive sufficient assistance throughout the process”, especially referring such cases to reintegration mechanisms and informing relevant actors (such as the Ministry of Labour and Social Welfare, the Ministry of Local Government Administration and Municipalities), in order to facilitate the return of those persons[[3]](#footnote-3).
7. The Readmission Policy stated that both UNMIK and the PISG had the obligation to “provide safe and dignified return of persons subject to involuntary return and create suitable conditions to return to Kosovo” and to fully observe international human rights standards “throughout the process of readmission” [[4]](#footnote-4).
8. Following the Kosovo unilateral declaration of independence in February 2008 and the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK became no longer able to perform effectively the vast majority of its tasks as an interim administration, and the SRSG has been unable to enforce the executive authority that is still formally vested upon him under United Nations Security Council resolution 1244 (1999) (see, e.g., Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354, §§ 7 and 17; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, §§ 3-4 and 29; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 21). Therefore, after this date, all policy and executive powers with respect to readmission of repatriated persons have been performed by the Kosovo authorities.

*Circumstances surrounding the complainant’s forced repatriation from the USA*

1. The complainant was born in Kosovo in 1954. In 1985 he went to the United States of America (USA). He resided and worked there for the following twenty-three years.
2. The complainant states that in 1990, following political developments in the region of the former Yugoslavia, he submitted an application for asylum to the USA authorities. However, he never received any feedback on the outcome of this application.
3. In 2004, the USA immigration authorities initiated removal proceedings against the complainant for allegedly overstaying in the country since 1985, thus violating the USA laws on immigration. The complainant states that he was unlawfully detained for nearly four years in the course of the removal proceedings and that at the end of proceedings and his subsequent appeal, he became subject to removal from the USA.
4. On 6 May 2008, pursuant to the issuance of a travel document by UNMIK, the complainant was deported from the USA to Kosovo. The complainant states that, upon being deported, he was not provided with any assistance by UNMIK or any other authority towards meeting his basic subsistence needs and supporting his reintegration into Kosovo society. The complainant states that he is affected by a medical condition from birth and that the lack of access to decent food, accommodation and medical care aggravated his condition. He further states that from 30 May 2008, he wrote letters and tried to address his requests for assistance to senior officials in UNMIK, without receiving any acknowledgement or response.
5. The complainant submits the following documents: copies of a letter he wrote to UNMIK on 30 May 2008, in which he asks for assistance to integrate into Kosovo’s society; the report of a specialist doctor of orthopedics and traumatology, dated 11 October 2010, which states that he is unfit to work; and a picture of the basement room in which he lived for an unspecified period of time after being deported from the USA, in May 2008. He states that the basement was not provided with heating or running water. The complainant states that the basement was his accommodation as “the house was under construction” and that, when in 2011 was ready”, he “moved upstairs in a room serving as a library” where he still lives.
6. **THE COMPLAINT**
7. Insofar as his complaint has been declared admissible, the complainant complains 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. He claims that upon being deported, he was left without proper housing and food, access to basic social and medical care, work or the financial means to sustain himself.
8. In this regard, the Panel considers that the complainant may be deemed to invoke 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).
9. **THE LAW**
10. **The parties’ submissions**
    1. **The complainant’s submissions**
11. The complainant states that UNMIK as the interim administration of Kosovo in May 2008, violated his economic and social rights by not providing him, upon his deportation to Kosovo, with the required assistance to reintegrate into Kosovo society and enjoy a decent standard of living. The complainant states that, upon his repatriation in May 2008, he was not provided with proper food, accommodation or clothing. He was deported with 200 euros in his pocket and, afterwards, he could count only on support from his mother’s pension, amounting to 45 euros per month. He states that he was born with a medical condition and, being left for a long time without a job, a proper place to live, medical care and adequate food, has aggravated his health condition.
    1. **The SRSG’s submissions**
12. At the outset, the SRSG states that, following UNMIK’s enquiries, the Kosovo Border Police confirmed that the complainant was deported from the USA pursuant to immigration laws of the USA and arrived at Prishtinë/Priština airport on 6 May 2008. The SRSG states that, however, UNMIK was “unable to obtain the letter which the complainant allegedly sent on 30 May 2008” requesting assistance and protection.
13. The SRSG states that there is no allegation from the complainant that UNMIK subjected him to any direct ill-treatment. Insofar as the complainant complains about the violation of his economic and social rights, the SRSG points out than in the case of *Pancenko v. Latvia* the European Court of Human Rights (ECtHR) states that the European Convention does not guarantee socio-economic rights such as the right to work, the right to free medical assistance or the right to claim financial assistance from a state to maintain a certain standard of living.
14. The SRSG acknowledges that, according to the case-law of the European Court of Human Rights, a person’s living conditions could come within the ambit of Article 3 of the ECHR (prohibition of inhuman or degrading treatment) provided that it attained “a minimum level of severity”. However, he states that the European Court’s judgment in the case *M.S.S. v. Belgium* referred to by the Panel in its admissibility decision, pertains to asylum seekers who, as such are *prima facie* vulnerable persons and to other persons who are fully dependent upon the state. The SRSG argues that the complainant is “a habitual resident of Kosovo for whom vulnerability and dependency on government authorities could not be implied without relevant information being provided”.
15. The SRSG also states that a violation of Article 3 of the ECHR could be found depending on the reaction of the authorities and their attitudes when the situation was brought to their attention. In particular he refers to the European Court’s judgment in the case *Budina v. Russia*, where the Court held that it could not exclude that state responsibility could arise where an applicant wholly dependent on state support is faced with official indifference in a situation of serious deprivation or want incompatible with human dignity. In this respect, the SRSG maintains that there is no documentation or proof that UNMIK acted inappropriately when responding to requests for assistance by the complainant in violation of Article 3.
16. The SRSG further states that on 28 November 2007, UNMIK approved a Readmission Policy on handling, among others, persons residing without legal status in host countries, including rejected asylum seekers and those who entered the country illegally and/or overstayed their visa. Under this policy and accompanying Reintegration Strategy, the relevant Provisional Institutions of Self-Government of Kosovo were assigned responsibilities in providing safe and dignified return of persons subject to involuntary return, which were also spelled out in UNMIK Regulation No. 2005/15, amending UNMIK Regulation No. 2001/19 *on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo*. The SRSG states that in January 2008, UNMIK transferred readmission competencies to the Kosovo Ministry of Internal Affairs, which was entrusted with the responsibility to coordinate readmission procedures and to ensure that vulnerable groups received sufficient assistance throughout the readmission process.
17. The SRSG argues that, in the present case, it was for the complainant, at the time of his return, to notify the border authorities or other government authorities of his condition of vulnerability and also “to provide relevant information which would have enabled the authorities to determine the manner in which assistance would be rendered to him” in line with the policy on Readmission and Reintegration. The SRSG states that “for any allegation of official indifference to stand, the complainant needs to prove that he informed the relevant authorities of his condition and need for support and that nothing was done to address this situation”.
18. The SRSG accepts UNMIK’s responsibility for providing a minimum core level of assistance and advice to the complainant in the period between 6 May 2008 and 15 June 2008. In this respect, he maintains that the complainant’s deportation was facilitated by UNMIK and that UNMIK’s role involved the issuance on 5 March 2008 of a travel document, which was valid for six months. However, there is no indication that UNMIK had been “informed of the complainant’s special medical condition prior to or upon his arrival or of his need of assistance”.
19. In light of the foregoing, the SRSG argues that the complaint is inadmissible and manifestly unfounded since, in his views, the complainant failed to provide any evidence or proof of his allegations against UNMIK. Therefore, the complaint under Article 3 of the ECHR, and Articles 6, 9, and 11 of the ICESCR shall be “rejected in its entirety”.
20. In his additional comments dated 29 November 2012 and 15 January 2013 respectively, the complainant first contests that he was a “habitual resident of Kosovo” at the time of his deportation from the USA, as stated by the SRSG. He states that he lived for 23 consecutive years in the USA and that, after he was deported, he had to start everything from scratch in Kosovo. He states that, indeed, a new identification card and driving license were issued to him, both bearing UNMIK’s logo on them, and that in the first and second elections held after his return to Kosovo, he was only allowed to vote as a “conditional voter”, a status used for voters who were not residents, but only temporarily present in Kosovo. The complainant argues that, as a non-habitual resident, he had no knowledge of the authorities and institutions of Kosovo and, for this reason, he turned to UNMIK for assistance.
21. With respect to the SRSG’s argument that the complainant did not provide sufficient evidence that he addressed UNMIK authorities, the complainant states that this is an attempt to put the blame on him, instead of acknowledging that there was no mechanism set up in Kosovo to deal with cases of returnees, and in particular those affected by disabilities, like himself. In this regard, he refers also to the 2008 Country Report of the US Department of State on Human Rights Practices in Kosovo stating that, notwithstanding the fact that the Constitution envisages equal rights for people with disabilities, they were neglected by government authorities and *de facto* discriminated against. He also refers to the Report of the Secretary-General on the United Nations Interim Administration in Kosovo, dated 24 November 2008, which, in its Annex II, states “The receiving municipalities are not aware of their responsibilities to facilitate the reintegration of forcibly repatriated persons, and financial means have still not been allocated at the municipal level for that purpose. This indicates a failure of the Government to ensure the implementation of the reintegration strategy for repatriated persons” (see UN Doc. S/2008/692, at § 34).
22. The complainant further contends that, even after the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK maintained an “important role” in Kosovo, since it kept, along with other international organisations such as the International Civilian Office, shared responsibility to “supervise” the independence of Kosovo. The complainant argues that in fact UNMIK and other inter-governmental organisations (i.e. the Organisation for Security and Cooperation in Europe and the European Union Rule of Law Mission in Kosovo) worked after June 2008 within the framework of the UN Security Council Resolution No. 1244 (1999), which established UNMIK.
    1. **The Panel’s assessment**

*General principles*

1. The complainant complains that UNMIK’s failure to provide him with adequate assistance upon his forced repatriation from the USA, amounted to a violation of his right to be free from inhuman and degrading treatment (Article 3 of the ECHR) and his right to work, to social security and to an adequate standard of living (Articles 6, 9 and 11 of the ICESCR).
2. The Panel refers to the well-established case-law of the European Court of Human Rights establishing that Article 3, along with Article 2, enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, ECtHR [GC] , *M.S.S. v. Belgium and Greece*, no. 30696/09, judgment of 21 January 2011, §§ 251-253; ECtHR [GC] *Labita v. Italy*, no. 26772/95, judgment of 6 April 2000, at § 119).
3. The Court considers treatment is considered to be “degrading” when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance (see ECtHR*, M.S.S. v. Belgium and Greece*, cited above, at § 220; and *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002‑III). The Court states that “in considering whether a particular form of treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3” (ECtHR, *Moldovan and Others v. Romania*, nos. 41138/98 and 64320/01, judgment of 12 July 2015, at § 101; *Raninen v. Finland*, judgment of 16 December 1997, Reports 1997-VIII, pp. 2821-22, § 55). However, the absence of any such object or purpose cannot conclusively rule out a finding of a violation of Article 3 (ECtHR, *M.S.S. v. Belgium and Greece*, cited above, at § 219; ECtHR, *Peers v. Greece*, no. 28524/95, judgment of 19 April 2001, § 74).
4. According to the Court's case law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see, among other authorities, ECtHR, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). However, the Court has stated that the assessment of this minimum is relative and depends “on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim” (see, among other authorities, ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited above, at § 219 ; see also *Kudła v. Poland* [GC], no. 30210/96, judgment of 26 October 2000, at § 91).
5. The Court has stated that the authorities shall afford special protection against ill-treatment to vulnerable persons and members of a particularly underprivileged and vulnerable population group, such as asylum seekers (ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited in § 37 above, at § 251; *V.M. and Others v. Belgium*, no. 60125/11, judgment of 7 July 2015, at § 153), children (see ECtHR, *Z. and Others v. the United Kingdom*, case no.29392/95, judgment of 10 May 2001, at § 73), persons with mental disabilities (ECtHR, *Horváth and Kiss v. Hungary*, no. 11146/11, judgment of 29 January 2013, at § 128).
6. With respect to the complainant’s allegations that his right to work, to social security and to an adequate standard of living have also been violated, the Panel recalls that, pursuant to Article 2 of the ICESCR, which concerns the scope of states’ obligations under the Covenant, it is accepted that the full realisation of these rights can be “progressive”, provided that the authorities take appropriate steps and allocate the maximum of their available resources to this aim.
7. However, The Panel recalls that in its General Comment on the Nature of State Parties’ Obligations, the Committee on Economic, Social and Cultural Rights has stated that provisions of the ICESCR, such as Article 6, 9 and 11, also impose obligations which are of immediate effect, including: ensuring the enjoyment of “minimum essential levels” of each of the rights concerned and the obligation to guarantee that the exercise of these rights shall be free from discrimination. Moreover, the Committee has underlined that the minimum core obligations stated above, do apply “also in times of severe resource constraints”, where authorities have obligations to protect “the vulnerable members of society” (IESCR Committee, General Comment No. 3 *on the Nature of State Parties’ Obligations*, 14 December 1990, UN Doc. E/1991/23, at § 12).

*Application of general principles to the present case*

1. The Panel at the outset, and in response to the SRSG’s objection that economic and social rights are not guaranteed under the ECHR, refers to the case-law of the European Court, which holds that the interpretation of the Convention may extend to the sphere of social and economic rights. The Court has stated that here 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 (ECtHR, *Budina v. Russia*, no. 45603/05, decision of 18 June 2009); and also ECtHR, *Larioshina v. Russia* (dec.) no. 56869/00, 23 April 2002, cited therein). 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” (see ECtHR, *Budina v. Russia*, no. 45603/05, decision of 18 June 2009; ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited in § 37 above, at §§ 251-253).
2. The Panel notes that it is not contested by the SRSG that UNMIK had a responsibility under UN Security Council Resolution No. 1244 (1999) and subsequent UNMIK Regulations (i.e. UNMIK Regulation No. 1999/24 *on the Law Applicable in Kosovo*), 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, notwithstanding the fact that some operational responsibilities were being handed over to the Kosovo PISG, primarily the MIA (see § 12 above).
3. The Panel further notes that it is equally not contested 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 (see § 31 above).
4. 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.
5. 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 (i.e. transport and temporary accommodation), as well as the long-term (i.e. health care, house reparation) needs of returnees and forward such information to the Ministry of Local Government Administration (at pag. 8-9 of the Strategy cited in § 11 above). Therefore, the Panel concludes that, even if for some reason the letters containing a request for assistance that the complainant reportedly sent to UNMIK (see §§ 20-21 above), 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. The Panel also notes that no documentation in this respect has been provided by the SRSG.
6. The Panel also notes that there is evidence of failures and deficiencies in the implementation of the UNMIK-PISG Readmission Policy and Reintegration Strategy. For example, the European Commission stated in its 2008 Kosovo Progress Report that the Reintegration Strategy was “yet to be implemented” as of November 2008[[5]](#footnote-5). Further, 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”[[6]](#footnote-6). 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. Similar concern about the lack of implementation of readmission policy and strategy in Kosovo had been expressed by the Council of Europe Commissioner for Human Rights during his visit to Kosovo in March 2009, who observed that many of those forcibly returned were not assisted by relevant authorities, finding themselves homeless upon their repatriation to Kosovo[[7]](#footnote-7).
7. The Panel notes 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.
8. In this regard, the Panel disagrees with the SRSG that the complainant can be labelled a habitual resident of Kosovo (see § 27 above) 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 (see § 33 above). 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 (see § 43 above). 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 (see ECtHR, *V.M. and Others v. Belgium*, cited in § 40 above).
9. The Panel therefore concludes 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.
10. 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).
11. 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.

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 3 OF THE ECHR, AND ARTICLES 9 AND 11 OF THE ICESCR;**
2. **FINDS THAT THERE HAS BEEN NO VIOLATION OF ARTICLE 6 OF THE ICESCR.**
3. **RECOMMENDS THAT UNMIK:**
4. **ACKNOWLEDGES ITS FAILURE TO ENSURE THE COMPLAINANT’S REPATRIATION IN ACCORDANCE WITH RELEVANT PROCEDURES AND INTERNATIONAL HUMAN RIGHTS STANDARDS, IN VIOLATION OF ARTICLE 3 OF THE ECHR AND ARTICLES 9 AND 11 OF THE ICESCR, AND MAKES AN APOLOGY TO THE COMPLAINANT;**
5. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 3 OF THE ECHR AND ARTICLES 9 AND 11 OF THE ICESCR;**
6. **TAKES APPROPRIATE STEPS WITH RELEVANT AUTHORITIES IN KOSOVO TO MAKE SURE THAT THE REPATRIATION OF PERSONS ORIGINATING FROM KOSOVO IS OPERATED IN COMPLIANCE WITH APPLICABLE PROCEDURES AND IN SUCH A WAY THAT IS COMPLIANT WITH RECOGNISED HUMAN RIGHTS STANDARDS;**
7. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov Marek Nowicki

Executive Officer Presiding Member

1. UNMIK-PISG, Strategy for Reintegration of Repatriated Persons, approved on 10 October 2007. [↑](#footnote-ref-1)
2. UNMIK-PISG, Readmission Policy, finalised by Working Group on Repatriation on 10 May 2007, approved by SRSG on 28 November 2007, at pag.12-13. [↑](#footnote-ref-2)
3. UNMIK-PISG, Readmission Policy cited in § 12 above, at pag. 9. [↑](#footnote-ref-3)
4. UNMIK-PISG, Readmission Policy cited in § 12 above, at pag. 16. [↑](#footnote-ref-4)
5. Commission of European Communities, Kosovo (under UNSCR 1244/99) 2008 Progress Report, 5 November 2008, SEC (2008) 2697, at pag. 25. [↑](#footnote-ref-5)
6. OSCE, Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo’s Municipalities, November 2009, at pag. 1. [↑](#footnote-ref-6)
7. Report of the Council of Europe Commissioner for Human Rights’ Special Visit to Kosovo, 23-27 March 2009, at §§ 154-158. [↑](#footnote-ref-7)