



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

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

## **Annual Report 2010**



## Foreword

2010 was the third full year of operation of the Human Rights Advisory Panel.

From February 2010, the Panel's composition remained unchanged over the course of its deliberations for the first time since it was established. This, combined with the Panel's streamlining of its internal procedures during its monthly sessions in Prishtinë/Priština, as well as its increased use of electronic communication, clearly improved its results, as evidenced by the statistics published in this report.

Furthermore, the current level of cooperation with UNMIK is another significant positive factor in enabling the Panel to review pending matters in appropriate detail and with greater efficacy than in the past.

Towards the end of 2010, the lengthy problems concerning the issue of the translation of complaints submitted to the Panel from Serbian or Albanian into English were finally resolved. A large percentage of complaints have waited many months for translation, in some cases for over a year. A lack of complete familiarity with these files prevented the Panel from taking any procedural steps in such cases whilst also developing overall strategies for dealing with them.

In its previous annual reports, the Panel, along with various international organisations and institutions, highlighted the need to increase the number of professional staff in its Secretariat. This remains a necessity due to the large number of complaints submitted in 2009, which at that time surprised everyone, and resulted in the number of cases increasing from tens to several hundred. The need for additional staff has been compounded by a very large number of pending cases which are complex and labour-intensive. There is also the justified expectation from the complainants, as well as from the general public that the Panel will deliver decisions and express its opinions within a reasonable timeframe. The Panel has unsuccessfully requested additional regular staff from UNMIK and has sought assistance in this respect, including financial support, from various governments. At the end of 2010, these lengthy efforts were finally successful. The Panel received approval for financial assistance from the Government of Sweden. As a result of excellent coordination between the Government of Sweden, the United Nations Development Programme, UNMIK and the Panel's Secretariat, the Secretariat will soon be supplemented by another lawyer. This however will not completely resolve the problem of personnel shortages in the Secretariat because our needs are great, but it will certainly significantly increase the Panel's capabilities.

Despite these ongoing challenges, in 2010 the Panel issued a number of important decisions and opinions in several areas, mainly concerning questions related to property rights and access to justice. The Panel's jurisprudence as developed in these cases will enable it to more quickly dispose of similar pending cases.

The substantial majority of pending cases concerns an alleged lack of adequate and effective investigations regarding missing or murdered persons. In 2010, the Panel focused its efforts on reviewing each of these cases and on collecting information and comments from the complainants. All the cases were thoroughly reviewed and joined where they concerned the same victims, family or events. Following this review, the

Panel has already adopted a number of admissibility decisions in missing and murdered person cases and commenced its examination of the merits. In many of these cases, serious problems arise from the Panel's lack of or insufficient access to police investigation files, which would normally be the starting point for a proper and full review of such complaints.

In spite of these difficulties, in light of the experiences of 2010, the Panel begins a new year of its activity with much greater optimism and confidence in its mandate, keeping in mind the role it has to play with respect to all those who have entrusted it with their grievances as well as its importance to the United Nations.

Marek Nowicki  
Presiding Member  
Human Rights Advisory Panel  
March 2011

## 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 third full year of operation in Prishtinë/Priština, Kosovo. The Panel remains the only mechanism that deals with human rights violations allegedly committed by or attributable to a United Nations field mission. Given the *sui generis* nature of the United Nations and the delicacy of dealing with human rights violations that could be attributable to the Organisation itself, the Panel is not a court and cannot order compensation or specific relief. It can however 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) in Kosovo when appropriate. Although the Panel is still awaiting public responses to the recommendations made by the Panel to date, the initial feedback from UNMIK indicates that the recommendations are treated seriously and that the Organisation intends to implement such recommendations when possible.

2. Due to the fact that the Panel was fully constituted for most of 2010, it was able to make greater progress in processing complaints than in previous years. This annual report covers the period beginning 1 January 2010 and ending 31 December 2010, during which time the Panel conducted 11 sessions, received 89 new complaints,<sup>2</sup> and communicated 60 cases to the SRSG for comments on the admissibility and/or merits of the complaints. During 2010, the Panel adopted 13 opinions on the merits (concerning 23 complaints), found a further 40 complaints admissible or admissible in part, adopted one partial decision on admissibility, declared 10 complaints inadmissible and struck five complaints from the list. Out of a total of 525 registered complaints (concerning thousands of individuals), a total of 66 are closed, while the remaining 459 complaints are pending at various stages of the proceedings.

3. Also in 2010, the Panel and the Secretariat managed to secure funding from the Swedish government to hire an additional staff member through a small United Nations Development Programme project to support the Panel. Hopefully the new staff member will come on board in early 2011 for a period of at least eight months. In addition, the Secretariat and UNMIK's Division of Mission Support finalised a contract for the outsourcing of non-confidential translations to decrease the backlog of pending translations.

4. In addition, the Panel and the Secretariat gave presentations to visiting master's degree students from the European Inter-University Centre for Human Rights and Democratisation and Secretariat staff participated in a workshop for Kosovo judges in which its opinion in the joint cases of *Milogorić, et al* (discussed in detail in §§ 48, 69, 72, 78 - 79, 83, and 118 - 119, below) was presented and questions were fielded.

---

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

<sup>2</sup> It is noteworthy that due to a shortage of translators at UNMIK, approximately 87 complaints remained untranslated at the end of 2010.

5. During the reporting period, the Panel was also the subject of public statements by different Council of Europe organs. On 7 June 2010, the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe (PACE) issued a report on the Situation in Kosovo and the role of the Council of Europe, which commented on the unique nature of the Panel<sup>3</sup> and was the basis for PACE Resolution 1739 on the situation in Kosovo and the role of the Council of Europe, which made some specific recommendations concerning legislative developments affecting the Panel in 2009.<sup>4</sup>

6. In 2009, the Chairperson of the Political Affairs Committee of the PACE requested the European Commission for Democracy through Law (the Venice Commission) to prepare a follow-on opinion on mechanisms to review the compatibility with human rights standards of acts of UNMIK and EULEX in Kosovo. An earlier Venice Commission opinion of 2004, given at the request of the PACE had recommended the formation of an independent Human Rights Court for Kosovo, with a Human Rights Advisory Panel as an interim solution to the “lack of an adequate and consistent mechanism for the examination of human rights breaches” for the international presences in Kosovo at that time, which would complement other human rights actors on the ground, such as the Ombudsperson’s Institution, and the field presences in Kosovo of the Office of the United Nations High Commissioner for Human Rights and the Organisation for Security and Cooperation in Europe.<sup>5</sup> The Venice Commission published its follow-on Opinion on the Existing Mechanisms to Review the Compatibility of Acts by UNMIK and EULEX in Kosovo on 21 December 2010.<sup>6</sup> The Panel welcomes the Opinion, which makes recommendations concerning a number of challenges faced by the Panel, and will take them into account in going forward.

## 2. Composition of the Panel

### 2.1. Panel Members

7. The two Panel members, nominated by the President of the European Court of Human Rights and (re-)appointed by the SRSG in accordance with UNMIK Regulation No. 2006/11 as of 1 January 2010 were Mr Marek Nowicki (Poland) and Mr Paul Lemmens (Belgium). Ms Christine Chinkin (United Kingdom/Australia) was

<sup>3</sup> Mr Björn Von Sydow, Report to the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe on the Situation in Kosovo and the role of the Council of Europe of 17 June 2010, available at:

[http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12281.htm#P22\\_339](http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12281.htm#P22_339), see in particular §§ 65-68.

<sup>4</sup> Resolution 1739 (2010) of the Parliamentary Assembly of the Council of Europe of 22 June 2010, available at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/eRES1739.htm>, see in particular §12.

<sup>5</sup> European Commission for Democracy through Law (Venice Commission), Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms, CDL-AD (2004)033, adopted by the Venice Commission at its 60th Plenary Session (Venice, 8-9 October 2004), available at [http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)033-e.asp](http://www.venice.coe.int/docs/2004/CDL-AD(2004)033-e.asp).

<sup>6</sup> European Commission for Democracy through Law (Venice Commission), Opinion on the existing mechanisms to review the compatibility with Human Rights Standards of Acts by UNMIK and EULEX in Kosovo, CDL-AD(2010)051, adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010), available at <http://www.venice.coe.int/docs/2010/CDL-AD%282010%29051-e.pdf>.

nominated by the President of the European Court of Human Rights and appointed by the SRSG on 11 February 2010. The Panel elected Mr Marek Nowicki as its Presiding Member in January 2008 and re-elected him as its Presiding Member in 2009 and 2010.<sup>7</sup>

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

9. **Marek A. Nowicki** (January 2007-present) is a Polish citizen and 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. He was one of the “eminent lawyers” appointed by the Parliamentary Assembly of the Council of Europe to assess the legal and human rights situation in Moldova (1994) and Azerbaijan (1997). In 1996 and 1998, the Council of Europe asked him to serve as a human rights expert during the evaluation of the compatibility of the legal systems of Georgia and the Russian Federation with the standards of the European Convention on Human Rights. He served as a human rights expert for the European Commission for Democracy through Law (Venice Commission) and the Directorate General of Human Rights and Legal Affairs of the Council of Europe.

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

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

14. Since 1986, Mr Lemmens has also been a professor at the University of Leuven where he lectures in international human rights law. He has also taught constitutional law, civil procedure and administrative procedure. He is the author of a number of books and articles on European human rights law. He is the Belgian director of the European Master’s Degree Programme in Human Rights and Democratisation, a European inter-university programme based in Venice, Italy. Mr Lemmens was a member of the Belgian Data Protection Commission from 1987 until 1997 and he

---

<sup>7</sup> HRAP Rules of Procedure, Rule 6.

serves as a member of the National Commission for the Rights of the Child since 2007. He was an expert for the Council of Europe on the study of the compatibility of certain national systems (Central and Eastern European States) with the European Convention on Human Rights during the 1990s. He was senior expert for Belgium in the legal group of experts of the European Union Fundamental Rights Agency (FRALEX).

15. **Christine Chinkin** (February 2010-present), Fellow of the British Academy, is currently Professor in International Law at the London School of Economics and 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.

16. 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) and co-author of The Making of International Law (2007). She is Director of Studies of the International Law Association. 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).

17. 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 on Human Rights; on Peace Agreements and Gender to the UN Division for the Advancement of Women and UNIFEM. She is currently a Scientific Expert to an Ad Hoc Committee of the Council of Europe on the drafting of a Convention on 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.

## **2.2. Secretariat of the Panel**

18. The Secretariat of the Panel consists of an Executive Officer, two legal officers and two administrative assistants. Biographical information is provided hereunder on members of the Secretariat who served during 2010.

### **2.2.1. Members of the Secretariat at the end of 2010**

19. **Rajesh Talwar**, an Indian citizen, has worked for the United Nations over the past ten years in various capacities in Kosovo, Somalia, Liberia and Afghanistan

before returning to Kosovo to take up the position of Executive Officer of the Human Rights Advisory Panel Secretariat. Prior to working for the United Nations he practised law in the Supreme Court of India and courts subordinate thereto. While practicing law he simultaneously taught LLB students at Delhi University and Jamia Millia Islamia over a period of six years. As a lawyer he was closely associated with several human rights cases including landmark petitions dealing with issues arising out of HIV/AIDS. In 1996 he went to the U.K. on a British Chevening scholarship, from where he did his LLM in Human Rights Law at the University of Nottingham. He has authored several publications, including books on law and human rights.

20. **Anila Premti**, an Albanian citizen, joined the Secretariat as a legal officer in October 2010, on temporary assignment from her regular post with UNCTAD in Geneva, Switzerland where she has worked since 2004. Previously, Ms Premti also served as a legal officer at UNMIK Department of Justice, Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (2007-2009), and at the United Nations Office of Legal Affairs, Codification Division, in New York (2001-2004). Prior to joining the United Nations, Ms Premti worked at the Ministry of Foreign Affairs in Albania (1995-2001), where she focused on legal and treaty issues, as well as on human rights issues in the context of the Organisation for Security and Cooperation in Europe and the Council of Europe. Ms Premti holds a Master of Laws degree from Tulane University in the United States, and a law degree from the University of Tirana, Albania. She has also studied international law and international relations in the Netherlands and in the United Kingdom.

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

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

23. **Adlije Muzaqi**, a national staff member, has been an administrative assistant 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.

#### **2.2.2. Members of the Secretariat who served during 2010**

24. **Nedim Osmanagić**, a Bosnian citizen, served as a legal officer from June 2009 until September 2010 and was the Officer-in-Charge of the Secretariat and its Acting Executive Officer from June 2009 until February 2010. Mr Osmanagić brought to the Secretariat his experience as Deputy Ombudsperson for Bosnia & Herzegovina, Human Rights Officer in the Office of the High Commissioner for Human Rights in



Prishtinë/Priština, Senior Judicial Inspector with UNMIK, Legal Officer for the Council of Europe's Venice Commission, UNMIK and UNMBIH, and Human Rights Adviser for the OSCE Mission in Bosnia & Herzegovina and UNDP Somalia. He left the Secretariat in September to join the Office of the High Commissioner for Human Rights in Kosovo.

25. **Mimoza Arifi-Hoxha**, a national staff member, was an administrative assistant with the Secretariat from November 2008 through September 2010. She commenced employment with the United Nations in December 1999 as an administrative assistant with the UNMIK Division of Public Information/Press Office. She now works for the Kosovo Special Prosecutors Office under the European Union Rule of Law Mission in Kosovo (EULEX).

### 3. Regulatory Framework

#### 3.1. Regulation No. 2006/12 and Administrative Direction No. 2009/1

26. The key legislative text for the operation of the Panel remains UNMIK Regulation No. 2006/12, which vests the Panel with jurisdiction to hear a wide range of human rights complaints allegedly attributable to UNMIK under the following instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. The Panel's temporal jurisdiction runs from 23 April 2005.<sup>8</sup>

27. On 17 October 2009, the SRSG promulgated UNMIK Administrative Direction No. 2009/1 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. This Administrative Direction in fact alters the admissibility criteria and procedure for the processing of complaints, the manner of conducting public hearings and the appointment procedure for Panel members. It regulates the manner of publishing press releases and announcements of the Panel. It also provides a cut-off date for the submission of complaints to the Panel. This Administrative Direction is discussed at length in the Panel's 2009 report in §§ 35-45.

28. The procedure before the Panel consists of two stages<sup>9</sup>: first, the examination of the admissibility of the complaint; and, second, if the complaint is declared admissible, the examination of the merits of the complaint. The admissibility is determined by a formal decision, containing the reasoning for the decision. In some cases the Panel has taken a partial decision on the admissibility first, and then determined the remaining admissibility issues by a final decision. Decisions are placed on the Panel's website after the parties to the proceedings have been notified. If the Panel declares the entire complaint, or part of it, admissible, it then commences its consideration of the merits of the complaint.

<sup>8</sup> UNMIK Regulation No. 2006/12, Section 2. See also §§ 47-48, *infra*.

<sup>9</sup> For a further description of the procedure before the Panel, see the Panel's 2009 Annual Report, available at [http://www.unmikonline.org/human\\_rights/documents/annual\\_report2009.pdf](http://www.unmikonline.org/human_rights/documents/annual_report2009.pdf), §§ 48-60.

29. If the complaint proceeds to an examination of the merits, the Panel will issue an opinion on whether there was a violation of the complainant's human rights attributable to UNMIK, which may contain recommendations to the SRSG.<sup>10</sup> Once an opinion has been provided to the parties, it is also published on the Panel's website.<sup>11</sup> From there, the SRSG retains exclusive authority to decide whether to act on the findings of the Panel.<sup>12</sup>

### 3.2. Rules of Procedure

30. In addition to a number of more cosmetic changes to the Panel's Rules of Procedure (e.g., replacing "President" with "Presiding Member"), in 2010, the Panel also adopted substantive changes to its Rules of Procedure, namely to its Rule 33, in order to comply with certain provisions of UNMIK Administrative Direction No. 2009/1 and to speed up the processing of complaints to the extent possible.

31. Specifically, Rule 33 § 1 was amended to incorporate the requirement laid out in Section 2.3 of UNMIK Administrative Direction No. 2009/1 directly into the Rules of Procedure. Section 2.3 states that, in the event a new admissibility issue is raised or arises after the complaint has been declared admissible, the Panel must suspend its deliberations on the merits and determine the admissibility issue by a separate decision. However, in situations where the SRSG has already fully discussed the merits of the complaint, Rule 33 § 2 allows the Panel to continue on to its opinion on the merits in which it will include its determination on the admissibility issue. The practical application of the new rules is discussed further under the Jurisprudence of the Panel section.

## 4. Public Information Initiatives

32. Following UNMIK's general withdrawal from the exercise of executive functions in Kosovo in 2008,<sup>13</sup> the Panel decided not to engage in any further large scale public outreach. As the responsibilities of UNMIK decreased, fewer complaints were likely to be declared admissible and the Panel sought to avoid raising expectations of complainants by encouraging the submission of new complaints.

33. However, the Panel undertook a public information initiative at the beginning of 2010, in light of Section 5 of UNMIK Administrative Direction No. 2009/1 which stipulates that the Panel will no longer be able to receive complaints later than 31 March 2010. Since this information was not widely known throughout the region, advertisements were placed in regional newspapers (in *Danas* and *Politika* published in Belgrade in Serbian and in *Koha Ditore* published in Prishtinë/Priština in Albanian) to ensure that the general public was aware of the deadline. In addition, the cut-off date was indicated on the welcome page of the Panel's website and is still noted there in all three working languages of the Panel.

---

<sup>10</sup> UNMIK Regulation No. 2006/12, Section 17.1.

<sup>11</sup> UNMIK Regulation No. 2006/12, Section 17.2.

<sup>12</sup> UNMIK Regulation No. 2006/12, Section 17.3.

<sup>13</sup> Following the Presidential Statement of the United Nations Security Council of 26 November 2008, S/PRST/2008/44, welcoming the continued engagement of the European Union in Kosovo.

34. The Panel's website also underwent significant changes to enable better user interface and easier access to the decisions and opinions of the Panel. The website now lists the decisions and opinions of the Panel in two different formats. The Panel continues to list cases by their case number and provides links to all the decisions and opinions for that case. In addition, it now indicates whether the complaint is still pending before the Panel or whether the procedure is complete. The Panel also now lists each of its decisions and opinions in chronological order, so that the public can follow the evolution of the jurisprudence of the Panel. Given the technical limitations at the present time, this was seen as the best way to improve access to the Panel's work.

## 5. Caseload of the Panel and Statistics

### 5.1. Statistics

35. During the reporting period, a total of 89 complaints were submitted prior to the 31 March 2010 cut-off date for the submission of new complaints. Thus, the Panel has received a total of 525 complaints between 2006 and 2010, out of which 459 are pending at various stages of the proceedings. At the end of 2010, 87 cases were still pending translation.

36. During the reporting period, the Panel adopted 13 opinions on the merits (concerning 23 complaints), found a further 40 complaints admissible or admissible in part, adopted one partial decision on admissibility, declared 10 complaints inadmissible and struck five complaints from the list.

37. At the end of 2010, there were 459 cases pending before the Panel, with 27 of those cases awaiting an opinion on the merits<sup>14</sup> and the remaining 432 cases awaiting an initial decision on admissibility.

<b>HRAP Caseload, Communications &amp; Determinations 2006 to 2010</b>						
<b>Caseload</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Received	3	12	69	352 <sup>15</sup>	89	<b>525</b>
Closed	0	0	18	11	37	<b>66</b>
Pending	3	15	66	407	455	<b>459</b>

  

<b>Communications</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Communicated to SRSG	N/A <sup>16</sup>	-	30	71	60	<b>161</b>
Responses from SRSG	-	-	18	75	30	<b>123</b>

<sup>14</sup> In cases for which there is a partial opinion on the merits, the case is still awaiting a final opinion on the merits. Also, following the promulgation of UNMIK Administrative Direction No. 2009/1, some cases currently awaiting an opinion on the merits require a second decision on admissibility.

<sup>15</sup> Cases received in 2009 and split into two or more cases were added to the 2009 figures.

<sup>16</sup> The Panel was not appointed until January 2007 and did not have its first session until November 2007, hence the use of "not applicable" (N/A).

Pending Response from SRSB	-	-	12	8	38	<b>38</b>
----------------------------	---	---	----	---	----	-----------

<b>Determinations: Type</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Total	-	-	32	23	78	<b>133</b>
Final Decisions on Admissibility	-	-	28	22	56	<b>106</b>
Partial Decisions on Admissibility	-	-	2	0	1	<b>3</b>
Final Opinions on the Merits	-	-	1	0	22	<b>23</b>
Partial Opinions on the Merits	-	-	0	1 <sup>17</sup>	0	<b>1</b>
Requests for Revision	-	-	1	0	0	<b>1</b>
<b>Determinations: Finding</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Decisions: Entirely Admissible	-	-	11	2	16	<b>29</b>
Decisions: Admissible in Part, Inadmissible in Part	-	-	(2)	9	24(1)	<b>33 (3<sup>18</sup>)</b>
Decisions: Entirely Inadmissible	-	-	17	8	10	<b>35</b>
Decisions: Strike off the List	-	-	0	3	5	<b>8</b>
Opinions: Violation	-	-	1	0	21	<b>22</b>
Opinions: No Violation	-	-	0	(1)	1	<b>1 (1<sup>19</sup>)</b>
Requests for Revision: Refused	-	-	1	0	0	<b>1</b>

## 5.2. Trends in the Caseload and Issues of Note

38. Certain trends in the caseload of the Panel have remained whilst others have altered significantly from the last reporting period.

39. In a shift from the last reporting period, the bulk of new cases received in 2010 focused on employment disputes, including the filing of three complaints concerning a total of 6,559 complainants regarding various aspects of their inability to work at the public electricity utility in Kosovo, where the complainants had worked until 1999.

<sup>17</sup> This refers to a partial opinion on the merits, in which the Panel determined a significant substantive issue, but adjourned a further examination of the merits to a later date; see 2009 Annual Report, paragraphs 58 & 85.

<sup>18</sup> The numbers in parenthesis refer to partial decisions on admissibility.

<sup>19</sup> The numbers in parenthesis refer to partial opinion on the merits referenced in footnote 17, *supra*.

40. Regarding the large number of cases filed in 2009 concerning the alleged lack of an effective investigation into disappearances, kidnappings and murders in Kosovo, an exhaustive review of all pending ineffective investigation complaints was conducted over the summer of 2010 in order to identify and consolidate complaints for joint consideration by the Panel. Indeed, following this development, the Panel began adopting decisions on admissibility in such cases in earnest and has commenced examinations on the merits in many instances.

41. Also of note is that, following the appointment of the third Panel Member in 2010, the Panel was able to conclude the bulk of the complaints filed in 2007 with the Panel adopting opinions on the merits or final decisions on admissibility in all but one of the pending 2007 complaints.

42. Following the adoption of UNMIK Administrative Direction No. 2009/1, the Panel has revisited admissibility issues in a number of cases and adopted a number of practices to allow it to follow the strictures of the administrative direction while still processing the cases efficiently.

43. In addition to the cases mentioned above, the Panel continued to process cases concerning the following:

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

- Allegations of a violation of the right to protection of property (Article 1 of Protocol No. 1 to the ECHR), in relation to the confiscation of property by law-enforcement authorities.

### 5.3. Opinions and Decisions of the Panel by Subject Matter

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

#### **Right to Life – Right to an Effective Investigation – Prohibition Torture, Inhuman or Degrading Treatment**

##### Protesters Killed by UNMIK Police on 10 February 2007

- *Kadri Balaj, et al* 104/07 (second decision of 31 March 2010) - Inadmissible<sup>20</sup>

##### Kosovan Killed in Car Accident with Off-Duty UNMIK Police Officer in 2002

- *Haki Deda & Vahide Deda* 56/08 (decision of 13 March 2010) - Inadmissible

##### Murder/Missing Person Case Related to the Conflict

- *D.P.* 04/09 (decision of 6 August 2010) - Admissible
- *G.R.* 12/09 (decision of 6 August 2010) - Admissible
- *S.C.* 02/09 (decision of 9 September 2010) - Admissible
- *J.D.* 44/09 (decision of 21 October 2010) - Admissible
- *B.A.* 52/09 (decision of 21 October 2010) - Admissible
- *Živorad Ogarević* 77/09 (decision of 21 October 2010) - Admissible
- *Nebojša Petković* 125/09 & 126/09 (decision of 21 October 2010)- Admissible
- *Milko Milenković* 127/09 (decision of 21 October 2010) - Admissible
- *Z.I.* 145/09 (decision of 21 October 2010) - Admissible
- *R.P.* 120/09 & 121/09 (decision of 26 November 2010) - Admissible
- *Zufe Miladinović* 86/09 (decision of 16 December 2010) - Admissible

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

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

- *N.M. and Others* 26/08 (second decision of 31 March 2010) - Inadmissible<sup>21</sup>

#### **Property - Right to Peaceful Enjoyment of Possessions**

##### TV Mitrovica/Independent Media Commission Seizure of Equipment

- *Nexhmedin Spahiu* 02/08 (opinion of 26 November 2010) - Violation

##### UNMIK Seizure of Commercial Goods (Ammunition)

- *Jahja Morina* 36/08 (decision of 16 December 2010) - Admissible

##### Private Dispute Regarding Property

- *Jagodinka Dokić* 208/09 (decision of 16 December 2010) - Inadmissible

##### Complaint against Kosovo Government after 15 June 2008

- *Kolë Krasniqi* 48/08 (decision of 13 March 2010) - Inadmissible

##### Right to a Fair Trial – Residential Property

- *Momir Jevtić* 07/08 (decision of 14 May 2010) - Inadmissible

<sup>20</sup> Although the complaint was declared inadmissible, the Panel left the door open to a special procedure for the complainants to re-open the proceedings in the complaint, discussed below at §§ 64.

<sup>21</sup> Although the complaint was declared inadmissible, the Panel left the door open to a special procedure for the complainants to re-open the proceedings in the complaint, discussed below at §§ 64.

## **Employment Disputes**

### Right to Fair Trial – Length of Proceedings

- *Gani Emini* 17/08 (opinion of 18 June 2010) - Violation

### Dismissal from Kosovo Protection Corps

- *Gani Thaçi*, 13/08 (partial decision on admissibility of 9 September 2010) - Inadmissible in Part, Remainder Adjudged

### UNMIK-Related Employment Dispute

- *Hashim Rusinovci* 43/10 (decision of 18 June 2010) - Inadmissible

### EULEX-Related Employment Dispute

- *Lulzim Gashi* 11/10 (decision of 14 May 2010) - Inadmissible

## **Housing and Property Claims Commission Cases**

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

- *Milije Vučković* 03/07 (opinion of 13 March 2010) - No Violation
- *Nadica Kušić* 08/07 (opinion of 15 May 2010) - Violation
- *Miroslav Mihajlović* 15/08 (decision of 16 December 2010) - Admissible
- *Simo Mitrović* 06/07 (opinion of 17 December 2010) - Violation
- *Slobodan Miletić* 07/07 (opinion of 17 December 2010) - Violation
- *Slobodan Dragojević* 09/07 (opinion of 17 December 2010) - Violation
- *Vesna Andjelković* 11/07 (opinion of 17 December 2010) - Violation

## **The “14,000” Cases<sup>22</sup>**

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

- *Petko Milogorić* 38/08, *Milisav Zivaljević* 58/08, *Dragan Gojković* 61/08, *Danilo Ćukić* 63/08 & *Slavko Bogičević* 69/08 (opinion of 24 March 2010) - Violation
- *V.Z.* 25/08 (opinion of 18 June 2010) - Violation
- *Živko Živković* 28/08, *Božidar Perović* 65/08, *Arsenije Dimitrijević* 68/08 & *Dragiša Aleksić* 40/09 (decision of 18 June 2010) - Admissible
- *Živko Živković* 28/08, *Božidar Perović* 65/08, *Arsenije Dimitrijević* 68/08 & *Dragiša Aleksić* 40/09 (opinion of 6 August 2010) - Violation
- *Esat Besriša* 27/08, *M.R.* 42/08, *Ž.S.* 44/08 & *Slobodan Aćimović* 32/09 (decision of 6 August 2010) - Admissible
- *Božidar Portić* 62/08, *Novica Ulamović* 30/09 & *Spasoje Martinović* 31/09 (decision of 6 August 2010) - Admissible
- *Božidar Portić* 62/08, *Novica Ulamović* 30/09 & *Spasoje Martinović* 31/09 (opinion of 9 September 2010) - Violation
- *Tomo Petrović* 59/08, *Obrad Djosović* 60/08, *Dragan Petković* 64/08, *Miodrag Milosavljević* 67/08, *Čedo Ralević* 07/09, *Miljko Ralević* 08/09, *Dragomir Ralević* 09/09, *Milenko Ralević* 10/09, *Simo Ralević* 11/09, *Muharem Ibraj* 16/09, *Muharem Ibraj* 17/09 & *Musa Ibraj* 22/09 (decision of 9 September 2010) - Admissible

<sup>22</sup> Referring to thousands of cases filed against UNMIK, KFOR, the PISG, and various Municipalities in 2004 for which proceedings were suspended following a letter from UNMIK to the various courts of Kosovo. At the time the letter was sent, it referred to “over 14,000 cases” submitted. In the end, the figure was closer to 17,000 – 18,000 cases.

- *Milka Živković* 29/08 (decision of 26 November 2010) - Admissible
- *Dragan Prelević* 11/08 (decision of 16 December 2010) - Admissible

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

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

- *Radovan Parlić* 01/07 (opinion of 18 June 2010) - Violation
- *Ranko Vasić* 02/07 (second decision of 6 August 2010) - Inadmissible

### **Challenge to the Provisions of Administrative Direction No. 2009/1**

#### Right to a Fair Trial – Right to an Effective Remedy

- *Kadri Balaj, et al II* 320/09 (decision of 12 February 2010) - Inadmissible

## **6. Jurisprudence of the Panel**

45. Following the adoption of UNMIK Administrative Direction No. 2009/1, the Panel was faced with novel admissibility issues, including the incorporation of the United Nations Third Party Claims Process as an UNMIK-decreed “available remedy” and exactly how to process the requirement that at any stage prior to the adoption of the Panel’s opinion on the merits of a complaint, UNMIK could raise new admissibility objections which would then require a “suspension” of the examination of the merits of a complaint. Although to some extent the Panel was able to deal with these issues via amendments to its Rules of Procedure (discussed above), other issues remained to be resolved through the jurisprudence of the Panel. Perhaps more significantly, the year under review saw the Panel expanding the scope of its substantive jurisprudence on a variety of subjects through the finalisation of a number of opinions on the merits.

### **6.1. Admissibility Issues**

#### **Six Month Rule**

46. Service on the authorised representative of a complainant is the same as service on the complainant himself for the purposes of the running of the six month period in which the complainant has to file a complaint with the Panel. See HRAP, *Ranko Vasić*, case no. 02/07 (second decision of 6 August 2010).

#### **Jurisdiction *Ratione Temporis***

47. Where there is a judicial decision refusing to open criminal proceedings, and that decision is served upon the victim or the victim’s family, and they do not file an appeal or take up a subsidiary prosecution, the date upon which that decision becomes final determines when the situation came to an end and thus whether the Panel has jurisdiction *ratione temporis* to deal with a complaint. In the case of *Haki Deda and Vahide Deda*, the complainants argued that the immunity afforded to an UNMIK International Police Officer prevented them from pursuing criminal and civil remedies against that officer following his involvement in a car accident which caused the death of one child and the serious injury of another. However, according to Section 2 of UNMIK Regulation No. 2006/12, the Panel only has jurisdiction to examine



alleged violations of human rights that occurred not earlier than 23 April 2005 or arising from facts that occurred prior to that date where the facts give rise to a continuing violation of human rights. Thus, since the incident occurred in 2002 and, moreover, the judgment of the Municipal Court refusing a motion to carry out an investigation became final on 19 January 2005, the Panel lacked jurisdiction *ratione temporis* to review the complaint. See HRAP, *Haki Deda and Vahide Deda*, case no. 56/08 (decision of 13 March 2010).

48. As noted above in the case of *Haki Deda and Vahide Deda*, the Panel reaffirmed in 2010 that it will only examine acts or omissions which gave rise to an alleged violation of human rights that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to that date when they give rise to a continuing violation of human rights, as set out in UNMIK Regulation No. 2006/12, Section 2. It also established that the period under its review will last until the time at which UNMIK ceased to be able to effectively exercise its mandate in that area. For KPA and HPD related matters, the Panel considered that the period of review ended on 31 December 2008, when UNMIK Regulation No. 2006/50 which created the KPA as the successor to the HPD, expired. See HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010). For matters related to the administration of justice in Kosovo, the Panel concluded that the period of review ended on 9 December 2008 with the entry into Kosovo of the European Union Rule of Law Mission in Kosovo (EULEX) and the cessation of UNMIK's executive authority in the field of justice. See HRAP, *Petko Milogorić, et al*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08 (opinion of 24 March 2010).

### **Jurisdiction *Ratione Personae***

49. Although linked with the concept of the Panel's competence *ratione temporis*, the Panel held that in certain cases concerning events that took place after UNMIK ceased to exercise executive authority in a certain area, the Panel lacked jurisdiction *ratione personae* over the actors responsible for the impugned acts. In the *Krasniqi* case, the Panel took into account the political reality on the ground and considered that from 15 June 2008 onwards, "UNMIK can in principle no longer be held responsible for acts or omissions imputable to the Kosovo authorities, merely on the basis of the continuing existence of Security Council resolution 1244 (1999)." The Panel did not exclude however, that there might be special circumstances that could lead to different conclusions in particular cases. See HRAP, *Kolë Krasniqi*, case no. 48/08 (decision of 13 March 2010).

50. In the *Krasniqi* case, the complainant complained that the failure of the Kosovo Ministry of Agriculture, Forestry, and Rural Development to enforce certain laws, amounted to discrimination directed at the complainant. In examining its competence *ratione personae* to deal with the complaint, the Panel agreed with the argument of the SRSG that, following the entry into force of the Kosovo Constitution on 15 June 2008, and taking into account the numerous reports of the Secretary-General to the United Nations Security Council on the issue, the SRSG was unable to fully enforce the executive authority that is still formally vested upon him under Security Council resolution 1244 (1999). The Panel went on to note that the decision complained of was exclusively imputable to the Kosovo authorities and there was no indication of any concrete involvement of UNMIK in the adoption of that position, nor were there

any special circumstances that would warrant a derogation from the principles laid out earlier in the decision regarding the continued responsibility of UNMIK. See HRAP, *Kolë Krasniqi*, case no. 48/08 (decision of 13 March 2010).

51. Likewise, in the *Thaçi* case, the Panel held that a number of human rights violations alleged to have taken place in 2009 did not engage the responsibility of UNMIK and therefore such allegations fell outside of the Panel's jurisdiction *ratione personae*. Those allegations were part of a larger complaint before the Panel, and as such the Panel adopted a partial decision on admissibility in order to sever those complaints from the remainder of the complaint that did fall within the Panel's jurisdiction *ratione personae* and was communicated to the SRSG for response on the admissibility. See HRAP, *Gani Thaçi*, case no. 13/08 (partial decision of 9 September 2010).

52. The *Gashi* case raised a different aspect of the Panel's competence *ratione personae*. The complaint concerned alleged irregularities in the recruitment procedures of EULEX, which operates under the overall authority of UNMIK within its status neutral approach to Kosovo's status. However, the dispute itself did not concern any matter over which UNMIK bore final responsibility under United Nations Security Council resolution 1244. In contrast, it concerned the internal principles of EULEX and EULEX's employment section's procedure for hiring of new staff. As such, the complaint fell outside of the Panel's jurisdiction *ratione personae*. See HRAP, *Lulzim Gashi*, case no. 11/10 (decision of 14 May 2010).

#### **Admissibility *Ratione Materiae***

53. The *Rusinovci* case concerns a complaint made by an UNMIK staff member regarding the termination of his employment due to the downsizing of UNMIK. The SRSG argued that the Panel was an advisory body set up to deal with alleged human rights violations attributable to UNMIK in its role of an interim administration in Kosovo and not with complaints relating to internal employment disputes and contractual issues within UNMIK. The Panel noted that Section 1.2 of UNMIK Regulation No. 2006/12 states that the Panel "shall examine complaints from any person or group of persons claiming to be the victim of a violation by UNMIK of the human rights" as set out in a number of international instruments listed in the regulation. The Panel found no express distinction in the regulations setting out the jurisdiction of the Panel that would differentiate the Panel's subject matter jurisdiction in light of UNMIK's role as interim administration or as an employer or party to a contract. As such, UNMIK is bound by human rights principles both as an interim administration and as an employer or party to a contract. The Panel therefore rejected that objection raised by the SRSG, however, the complaint was found to be inadmissible on other grounds. See HRAP, *Hashim Rusinovci*, case no. 43/10 (decision of 18 June 2010).

54. In the *Đokić* case, the complaint concerned a private legal dispute between individuals and did not concern acts or omissions imputable to UNMIK. The complainant could not have been a victim of a violation of human rights committed by or attributable to UNMIK. As such, the complaint was outside of the Panel's jurisdiction *ratione materiae* and was therefore declared inadmissible. See HRAP, *Jagodinka Đokić*, case no. 208/09 (decision of 16 December 2010).

55. Following on a case decided in 2009 (HRAP, *Ramadan Demirović*, case no 57/08), in the *Kadri Balaj et al. II* case, the Panel confirmed that it is within the discretion of the SRSG to determine the regulatory scheme of the complaint system before the Panel, and that the Panel has no jurisdiction to examine the compatibility of the legal basis of its own functioning with human rights standards. The Panel did note that while it may be seriously questioned as to whether the SRSG has the competence to alter some of the basic principles contained in UNMIK Regulation No. 2006/12 by an “implementing” administrative direction, for the purpose of the Panel’s jurisdiction, it made no difference whether the modifications were made by regulation or administrative direction. The fact remains that the provisions of UNMIK Administrative Direction No. 2009/1 form part of the basis of the Panel’s functioning. See *Kadri Balaj et al. II* 320/09 (decision of 12 February 2010).

### **Exhaustion of Available Remedies – Criminal Matters**

56. Where a criminal investigation into a missing person or murder case has been ongoing for many years, the argument that the complainant has yet to exhaust remedies because the investigation is still ongoing will be rejected by the Panel. See HRAP, *D.P.*, case no. 04/09 (decision of 6 August 2010).

57. In certain cases, the SRSG argues that the complaint is inadmissible due to failure to exhaust remedies since the complaint is pending with a EULEX prosecutor, but acknowledges that the exhaustion issue is closely linked to the merits. In such cases, the Panel links the issue to the merits under Rule 31*bis* of the Rules of Procedure instead of rejecting the admissibility argument of the SRSG. See HRAP, *R.P.*, cases nos. 120/09 and 121/09 (decision of 26 November 2010).

### **Exhaustion of Available Remedies – Civil Matters**

58. When the SRSG raises an objection based on non-exhaustion of remedies, those remedies must be identifiable and they must deal with the object of the complaint. In the *Morina* case, the SRSG argued that the taking of the complainant’s private property was due to the *ultra vires* acts of the former UNMIK international administrator of a municipality and that the complainant should make use of available administrative procedures before the municipality. However, the object of the complaint was the seizure of commercial goods from the complainant by way of criminal proceedings, and not the revocation of his license by the international administrator. Furthermore, despite being asked to clarify the legal basis upon which UNMIK claimed there were available remedies before the municipality, UNMIK was unable to do so nor did such remedies appear to exist *prima facie*. Thus, the Panel decided to look at the issue of the availability of remedies on the merits under Article 13 of the ECHR and declared the complaint admissible. See HRAP, *Jajha Morina*, case no. 36/08 (decision of 16 December 2010).

59. However, the complainant must still exhaust known or obviously available remedies before bringing a complaint before the Panel. In the *Jevtić* case, the complainant had already appealed against a court judgment which dealt with the same issues as the object of his complaint before the Panel. Appellate proceedings were pending at the time of the decision by the Panel and there was no allegation that the

appeal would be ineffective nor that it had or was taking an excessive amount of time to complete. In the circumstances, the Panel found that the complaint was premature and declared it inadmissible for failure to exhaust remedies. See HRAP, *Momir Jevtić*, case no. 07/08 (decision of 14 May 2010).

60. In addition to judicial remedies, non-judicial remedies must still be exhausted in certain circumstances. In the *Rusinovci* case, an UNMIK staff member complained about the fairness of the termination of his employment due to the downsizing of UNMIK. The Panel found that the complainant had yet to exhaust available avenues, as the formal United Nations “Administration of Justice” system, set out in General Assembly Resolution A/RES/63/253 of 24 December 2008 was available to the complainant and he had yet to seek recourse through that system. Although the SRSB argued that informal negotiation and mediation procedures were also available to the complainant, the Panel did not rule on whether such informal negotiation and mediation procedures would have been considered avenues to be exhausted, since the formal United Nations “Administration of Justice” system constituted an avenue that must be exhausted. See HRAP, *Hashim Rusinovci*, case no. 43/10 (decision of 18 June 2010).

#### **Exhaustion of Available Remedies – United Nations Third Party Claims Process**

61. Following the adoption of UNMIK Administrative Direction No. 2009/1, the Panel concluded that it had been divested of jurisdiction to determine whether the United Nations Third Party Claims Process, made applicable to UNMIK by Section 7 of UNMIK Regulation no. 2000/47, was an available remedy that must be exhausted and/or that is effective within the meaning of Article 13 of the ECHR. Section 2.2 of Administrative Direction no. 2009/1 provides that any complaint “that is or may become in the future” the subject of the United Nations Third Party Claims Process, made applicable to UNMIK by Section 7 of UNMIK Regulation no. 2000/47, “shall be deemed inadmissible”, for reasons that this process is to be considered an available avenue in the sense of Section 3.1 of UNMIK Regulation No. 2006/12. Under Section 3.1 of UNMIK Regulation No. 2006/12 normal recourse should be had by a complainant to avenues which are available and sufficient to afford redress in respect of the breaches alleged. In previous cases, the Panel has found that the existence of the avenues in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. Normally, it would have been for the Panel to decide whether the available avenue was effective in theory and in practice. However, UNMIK Administrative Direction No. 2009/1 removed this jurisdiction from the Panel by obliging it to consider the UN Third Party Claims Process to be an accessible and sufficient avenue. While the Panel conceded that it no longer had jurisdiction to determine whether the UN Third Party Claims Process was an accessible and sufficient avenue, it also held that the mere raising of an objection based on Section 2.2 of UNMIK Administrative Direction No. 2009/1 does not inevitably and without more lead to the conclusion that the complaint is deemed inadmissible. The Panel considered that, when such an objection is raised, it must ascertain whether the object of the complaint before the Panel is of such a nature that it can reasonably give rise to a claim that can be dealt with by the UN Third Party Claims Process. The Panel will declare a complaint inadmissible only when it is satisfied that the claim is one that falls *prima facie* within the ambit of the UN Third

Party Claims Process. By contrast, it is precluded from examining whether the outcome of the process is capable of providing sufficient redress in respect of the complaint before the Panel, or whether the process offers reasonable prospects of success to the complainants. Complaints about violations of human rights attributable to UNMIK will be deemed inadmissible under Section 2.2 of UNMIK Administrative Direction no. 2009/1 to the extent that they have resulted either in personal injury, illness or death, or in property loss or damage. Complaints about violations of human rights that have not resulted in damage of such a nature will normally not run counter to the requirement of exhaustion with the UN Third Party Claims Process. See HRAP, *Kadri Balaj et al. I*, case no. 04/07 (second decision of 31 March 2010) and HRAP, *N.M. and others*, case no. 26/08 (second decision of 31 March 2010).

62. In *Kadri Balaj et al. I*, the complaint was about the killing and/or serious wounding of four individuals who participated in a demonstration, the effectiveness of the criminal investigation that followed, and the impossibility for the complainants to bring a claim against UNMIK before any court or other body capable of providing redress. Since the complaints were mostly linked to the use of force by UNMIK Police, the Panel found that those parts of the complaint fell *prima facie* within the UN Third Party Claims Process. The remaining procedural aspects of the right to life and the right to be free from torture as well as violations of the right to a fair trial and the right to an effective remedy concern acts, omissions or situations that did not clearly result in personal injury, illness, or death, nor in property loss or damage. As such, the Panel found that those complaints were not covered by the UN Third Party Claims Process. The Panel considered, however, that the substantive and procedural complaints were so interlinked, that it would be artificial to separate them. The Panel therefore declared the entire complaint inadmissible. See HRAP, *Kadri Balaj et al. I*, case no. 04/07 (second decision of 31 March 2010).

63. Likewise, in *N.M. and others*, the complaint was lodged by 143 members of the Roma, Ashkali and Egyptian communities in Kosovo (referred to as the “Roma” in the decision) who are, or have been, resident in five UNMIK administered camps for internally displaced persons (IDPs) throughout northern Mitrovica/Mitrovicë. All complainants claim to have suffered lead poisoning and other health problems on account of the soil contamination in the camp sites due to the proximity of the camps to the Trepça/Trepča smelter and mining complex and/or on account of the generally poor hygiene and living conditions in the camps. The substantive complaints declared admissible by the Panel in its 5 June 2009 decision on admissibility were all directly linked to the initial operational choice to place the IDPs in the camps in question and/or the failure to relocate them, and the subsequent effects which resulted in personal injury, illness or death. The Panel considered that these parts of the complaint fell *prima facie* within the ambit of the UN Third Party Claims Process and therefore were deemed inadmissible. Again though, the procedural complaints declared admissible by the Panel, such as the complaints about violations of the procedural aspects of the right to life and the prohibition of inhuman or degrading treatment, as well as about violations of the right to a fair trial and the right to an effective remedy, concern acts, omissions or situations that clearly did not result in personal injury, illness or death, nor in property loss or damage. As such, the Panel considered that these parts of the complaint were not covered by the UN Third Party Claims Process. The Panel went on to state though that the substantive and procedural complaints pending before the Panel were so interlinked that it would have been

artificial to separate them, resulting in the substantive complaints being dealt with in the UN Third Party Claims Process and the procedural complaints at the same time being dealt with by the Panel. The Panel therefore declared the entire complaint inadmissible. See HRAP, *N.M. and others*, case no. 26/08 (second decision of 31 March 2010).

64. However, in both decisions, the Panel noted that requirements of exhaustion of remedies are by their very nature, temporary restrictions on admissibility. Therefore, the effect of a declaration of inadmissibility on account of non-exhaustion of available remedies is in principle of a dilatory nature only, not of a peremptory nature. As such, the complainants would be free to resubmit their claim before the Panel once the process was concluded. The SRSG agreed with this conclusion, and argued that the complainant would be able to submit a new complaint, once the UN Third Party Claims Procedure was complete, and “until 31 March 2010, the cut-off date for submission of complaints before the (Panel)” under Section 5 of UNMIK Administrative Direction No. 2009/1. However, under that interpretation, the complainants would invariably run afoul of the 31 March 2010 deadline for the submission of complaints given that the Panel was deliberating the admissibility of the *Kadri Balaj et al. I* and *N.M. and others* in March 2010. The Panel found that forcing the complainants to re-file their complaints, which had elements that were otherwise found to be admissible by the Panel in its decisions on admissibility of June 2008 and June 2009, respectively, before the expiration of a deadline that would certainly pass before their other procedure was complete would offend basic notions of justice. Hence, based on Rule 49 of the Panel’s Rules of Procedure, which provides that issues not governed by the Panel’s Rules of Procedure shall be settled by the Panel, the Panel decided that once the UN Third Party Claims Procedure was concluded, the complainants could request the Panel to reopen the proceedings and the Panel would then decide whether to accept such a request. See HRAP, *Kadri Balaj et al. I*, case no. 04/07 (second decision of 31 March 2010) and HRAP, *N.M. and others*, case no. 26/08 (second decision of 31 March 2010).

### **Re-examination of Admissibility**

65. Following the adoption of UNMIK Administrative Direction No. 2009/1, the Panel will revisit admissibility issues that arise after it has already issued a decision on admissibility. In cases where the SRSG has already provided UNMIK’s comments on the merits of the complaint, the Panel will follow Rule 33 § 2 of its Rules of Procedure and include its determination on the admissibility issue in its opinion on the merits, while in other cases where the merits have not been fully discussed, it will pronounce on the admissibility issue through a second decision on admissibility. In the *Kušić* case for example, the complainant complained of the non-execution of a decision of the Housing and Property Claims Commission (HPCC) in her favour, as well as the fairness of the proceedings and the HPCC decision itself. The complaint had been declared admissible in full by a 2008 decision of the Panel and the SRSG had already provided his comments the merits of the complaint. However, in light of the provision of additional files concerning the complaint, the Panel found that additional admissibility issues had arisen in that it became clear that the complainant had received the final decision of the HPCC more than six months before she filed her complaint before the Panel. In such circumstances, the Panel raised the admissibility issues of its own accord and addressed them in the body of the opinion. The Panel

found that while the HPCC decision itself had not been executed and thus the situation was still ongoing when the complainant filed her complaint before the Panel, the complainant had in fact filed her complaint with the Panel more than six months after she received the final decision of the HPCC. Thus, the Panel declared all of those complaints aimed at the fairness of the proceedings, and therefore the substance of the HPCC decision itself, inadmissible as out of time. The remainder of the complaint concerning the non-execution of the decision did not run afoul of the six month rule and was declared admissible. The Panel then proceeded to an examination on the merits. See HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010).

66. In cases where the merits of the complaint have not yet been discussed in full by the parties, the Panel will issue a second decision on admissibility in line with UNMIK Administrative Direction 2009/1. See HRAP, *Kadri Balaj et al. I*, case no. 04/07 (second decision of 31 March 2010) and HRAP, *N.M. and others*, case no. 26/08 (second decision of 31 March 2010).

67. However, in some cases where the SRSB has fully discussed the merits of the complaint, if the admissibility issue which later arises renders the complaint fully inadmissible, the Panel will not proceed to deal with the complaint through an opinion on the merits which includes a determination of the admissibility issue, but rather through a second decision on admissibility. In the *Vasić* case for example, the complainant complained about his lack of inclusion in the list of employees entitled to a share of the proceeds of the privatisation of his former workplace. He had already filed a claim with the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, which had been rejected. The complaint was declared admissible by the Panel in 2008. After the complaint was declared admissible, the SRSB provided comments on the admissibility and the merits of the complaint, and later suggested the Panel to contact the Special Chamber directly, instead of going through the SRSB. After reviewing the files held by the Special Chamber, the Panel obtained an “acknowledgment of receipt” document which showed that the complainant’s authorised representative had received the final decision in July 2006. The Panel found that service on the authorised representative was the same as service on the complainant himself for the purposes of the six month rule, and therefore the complaint was filed more than six months after the final decision in the matter. As such, the entire complaint before the Panel was declared inadmissible by the Panel through a second decision on admissibility. See HRAP, *Ranko Vasić*, case no. 02/07 (second decision of 6 August 2010).

## **6.2. Strike Out**

68. In addition to cases where the complainants no longer wanted to pursue the complaint (See for example HRAP, *Gordana Bulatović*, case no. 38/09 (decision of 19 April 2010)), the Panel also struck off the list those cases that were mere repetitions of previously filed complaints. See HRAP, *Slavi Mitić*, case no. 102/09 (decision of 19 April 2010), HRAP, *Snežana Milenković*, case no. 313/09 (decision of 19 April 2010), and HRAP, *Verica Patrnogić*, case no. 334/09 (decision of 9 September 2010).

### 6.3. Substantive Issues

#### 6.3.1. UNMIK Responsibility

69. In the case of *Milogorić et al.*, the complainants argued that a letter sent by the Director of the UNMIK Department of Justice in 2004 directing the courts not to process a certain category of pending claims, including those filed by the complainants, was a direct interference in the judiciary which resulted in a violation of their rights to a speedy trial and access to a court under Article 6 § 1 of the ECHR. In light of various arguments of the parties, the Panel considered it relevant to address UNMIK's responsibility in the area of the administration of justice, once the relevant competence was transferred from UNMIK to the Provisional Institutions of Self-Government in 2004, shortly after the interference from UNMIK, which was at the core of the complaints. The Panel noted at the outset that pursuant to the Constitutional Framework for Provisional Self-Government (UNMIK Regulation No. 2001/9 of 15 May 2001, Section 1.5), courts were among the PISG. However, it also recalled that it resulted from the Constitutional Framework, in particular from Chapter 12, that the SRSG retained a power of oversight over the PISG, their officials and their agencies. He was in particular empowered to take appropriate measures whenever their actions were inconsistent with the Constitutional Framework. Since the PISG had to "observe and ensure internationally recognised human rights and fundamental freedoms", including those rights and freedoms set forth in a number of international human rights instruments (Section 3.2), it was within the power of the SRSG to take action if these rights were violated. This led the Panel to the conclusion that UNMIK remained responsible, from a human rights perspective, for any action or omission imputable to the PISG. This approach followed the Panel's earlier approach laid out in the *Spahiu* case, no. 02/08, in its partial opinion of 20 March 2009. Finally, and most significantly for the Panel's conclusion, in the case of *Milogorić et al.*, it was the direct action by UNMIK, i.e. the Director of the Department of Justice, and not any action by the PISG, which effectively prevented the courts from dealing with the complainants' cases. See HRAP, *Petko Milogorić et al.*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08 (opinion of 24 March 2010).

#### 6.3.2. Competence *Ratione Temporis*

70. Given the unique circumstances in which the Panel operates, it is not only necessary to develop a framework for assessing ongoing situations which began prior to 23 April 2005 (the beginning of the Panel's temporal jurisdiction according to Section 2 of UNMIK Regulation No. 2006/12), but also to consider how to approach situations which were still ongoing when UNMIK ceased exercising effective control in a certain area following the unilateral declaration of independence by the Kosovo authorities and UNMIK's gradual downsizing in light of the political situation on the ground during the course of 2008 and 2009.

71. The Panel had a chance to assess its competence *ratione temporis* in length of proceedings cases where the court proceedings began prior to 23 April 2005 in the *Emini* case. It found that the period to be considered in assessing the lengthiness of the proceedings starts from the date of the Panel's temporal jurisdiction (23 April



2005). Yet, in assessing the reasonableness of the time that elapsed after 23 April 2005, the Panel will nevertheless take into account the state of the proceedings at that moment. The *Emini* case involved an employment dispute between the complainant and his former employer. The complainant had initiated civil proceedings to protect his labour rights on 17 April 2003 which lasted approximately five years, and ended on 15 May 2008 when the Supreme Court handed down its final judgment. The proceedings therefore lasted five years and twenty-eight days of which three years and twenty-two days fell to be examined by the Panel within its competence *ratione temporis*. See HRAP, *Gani Emini*, case no. 17/08 (opinion of 18 June 2010).

72. In the *Milogorić et al.* cases, the Panel had to deal with an event that took place prior to the commencement of the Panel's temporal jurisdiction which led to a situation that lasted until the end of UNMIK's competence in the relevant area. In those cases, which form part of the group of cases known as the "14,000 Cases",<sup>23</sup> the Panel found that the initial violation alleged by the applicants stemmed from an August 2004 letter from the UNMIK Department of Justice which halted judicial proceedings in a certain group of cases. While the letter in itself did not fall within the Panel's temporal jurisdiction since it was sent prior to 23 April 2005, its effects were extended to 28 September 2008 when the stay of proceedings was lifted. It therefore constituted a continuing situation up to that date. As in the *Emini* case above, the Panel took into consideration the period starting from the commencement of the Panel's temporal jurisdiction on 23 April 2005, while also taking into account the state of proceedings at that date. Regarding the end of the Panel's competence *ratione temporis* in the *Milogorić et al.* cases, the Panel recalled that on 9 December 2008, UNMIK's responsibility with regard to the judiciary in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, and following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44) welcoming the continued engagement of the European Union in Kosovo. Thus, while the complainants were still awaiting news of any progress in their claims when the Panel adopted its opinion in March 2010, the Panel nevertheless concluded that the period under review for this type of complaint ended on 9 December 2008, when UNMIK's responsibility with regard to the judiciary in Kosovo, and consequently for its handling of the present cases, ceased. See HRAP, *Petko Milogorić et al.*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08 (opinion of 24 March 2010).

73. Likewise, in the *Kušić* case, the Panel held that the period under its review for the examination of a complaint against the HPD and the HPCC ended upon the expiration of the relevant UNMIK Regulation governing the functioning of the HPD's successor organization, the Kosovo Property Agency, on 31 December 2008. This also coincided roughly with the entry of EULEX as an actor in the judicial field on 9 December 2008. See HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010).

### 6.3.3. Right to Life – Article 2 of the ECHR

74. The Panel has held that the disappearance of any person in the territory of Kosovo at or around the time of the conflict in Kosovo, gave rise to a rebuttable

---

<sup>23</sup> See note 22, *supra*.

presumption that the person disappeared in life-threatening circumstances, thus obliging UNMIK to conduct an investigation into that person's disappearance under Article 2 of the ECHR. See HRAP, *B.A.*, case no. 52/09 (decision of 21 October 2010). For instance, in *B.A.*, the complainant's 80 year old father had disappeared just after the entry of UNMIK and KFOR into Kosovo in 1999. His body was exhumed from an unmarked grave in June 2000 and a subsequent autopsy indicated that he died of massive trauma to the head. UNMIK argued that because the victim's death was caused by blunt trauma and that he was 80 years old when he went missing, it was possible that he had fallen and thus his death could have been accidental. According to UNMIK, this, combined with the fact that his disappearance was not reported to authorities when it occurred, led to the conclusion that there was very little basis upon which UNMIK could have opened an investigation. The Panel rejected UNMIK's argument.

75. UNMIK cannot rely on the primacy jurisdiction of the ICTY to relieve it of the obligation under Article 2 of the ECHR to conduct an effective investigation, at least not in the absence of a formal communication from the ICTY requesting UNMIK to defer to its competence in the matter. See HRAP, *B.A.*, case no. 52/09 (decision of 21 October 2010).

76. In response to a complaint alleging that there was not an effective investigation into the murder of the complainant's husband and son, UNMIK argued that the ICTY had the mandate to investigate all crimes that gave rise to war crimes allegations in Kosovo and that the ICTY only provided limited documentation to UNMIK in the present case. According to UNMIK, it did not have the grounds upon which to open an investigation. The Panel rejected these arguments, noting that there was no formal request for deferral from the ICTY, which would have obliged UNMIK to suspend its investigation. As such, regardless of the ICTY's initial interest in the case, UNMIK still had a responsibility to investigate the murders of the two persons under Article 2 of the ECHR. See HRAP, *S.C.*, case no. 02/09 (decision of 9 September 2010)

#### **6.3.4. Right to a Fair Trial – Article 6 § 1 of the ECHR**

##### **Applicability of Article 6 § 1 of the ECHR**

77. In the *Vučković* case, the complainant argued that the Housing and Property Claims Commission (HPCC), as a mass claims body for the settlement of disputes concerning residential property rights, violated his right to a fair trial on a number of grounds. The Panel was thus faced with the question of the applicability of Article 6 § 1 of the ECHR to the HPCC and its proceedings. By way of background, after the arrival of UNMIK in Kosovo, the Housing and Property Directorate (HPD) and the HPCC were established by UNMIK Regulation No. 1999/23 of 15 November 1999 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission. The mandate of HPD was to regularise housing and property rights in Kosovo and to resolve disputes regarding residential property. The purpose was to provide overall direction on property rights in Kosovo in order to achieve efficient and effective resolution of claims concerning residential property. UNMIK Regulation No. 1999/23 established the HPCC as an independent organ of the HPD responsible for settling non-commercial disputes concerning residential property referred to it by the HPD until the SRSB determined that the local courts

were able to carry out those functions. In analysing the question, the Panel recalled that Article 6 § 1 of the ECHR in principle only applies to proceedings before a tribunal, which determines civil rights and obligations. In this context, the Panel noted that the HPCC was not a classic court. It was a mass claims processing body which issued binding and enforceable decisions. The rules of procedure for proceedings before the HPCC were set forth in UNMIK Regulation No. 2000/60 of 31 October 2000 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, and the HPCC determined claims in an adversarial process on the basis of rules of law. These decisions were final and were executed by an administrative body, the HPD. The HPCC was therefore judicial in function and Article 6 of the ECHR applied to proceedings before the HPCC. See HRAP, *Milije Vučković*, case no. 03/07 (opinion of 13 March 2010), HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010), HRAP *Simo Mitrović*, and case no. 06/07 (opinion of 17 December 2010), amongst other cases.

### **Right of Access to a Court**

78. The guarantees laid down in Article 6 § 1 of the ECHR, the right to a fair trial, secure for everyone, *inter alia*, the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. On this point, the Panel followed the principles set forth by the European Court of Human Rights. It recalled that the right of access to a court includes not only the right to institute proceedings but also the right to obtain a “determination” of the dispute by a court. It would be illusory if a legal system allowed an individual to bring a civil action before a court without ensuring that the case would be determined by a final decision in the judicial proceedings. It would be inconceivable for Article 6 § 1 to describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without guaranteeing the parties that their civil disputes will be finally determined. In the Panel’s consideration, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the competent authorities. In this respect, the authorities enjoy a certain margin of appreciation. However, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 of the ECHR if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. See HRAP, *Petko Milogorić et al.*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08 (opinion of 24 March 2010).

79. In the *Milogorić et al.* cases, the complainants alleged that the above mentioned August 2004 letter from the UNMIK Department of Justice, which halted judicial proceedings in a certain group of cases filed largely by displaced ethnic Serbs for damage to property damaged or destroyed after the entry of UNMIK into Kosovo in 1999 and later known as the “14,000 cases” (see above, §69), led to a violation of various aspects of Article 6 § 1 of the ECHR. Regarding the access to a court issue, the Panel observed that the complainants enjoyed the possibility of bringing legal proceedings in their cases pursuant to the relevant legislation in force. They used this

opportunity by lodging the lawsuits suing various authorities before the municipal or district courts for damages in respect of their destroyed property located in Kosovo. However, the complainants' civil cases were, at the very moment of the lodging of their lawsuits, directed to a standstill by virtue of the UNMIK Department of Justice's request of 26 August 2004. Accordingly, no procedure at all was instituted or had taken place upon these lawsuits. The relevant courts did not issue any decision related to the standstill of proceedings in the complainants' cases. The rest of the cases in this particular category of cases faced the same impasse. The Panel concluded as such that the complainants' right of access to a court was restricted because of an initiative directly taken by an UNMIK organ. As indicated above, this situation ended on 28 September 2008, when the Department of Justice called the courts to process the cases at hand.

80. Having found that the right to access the courts was restricted, the Panel then had to determine whether UNMIK acted within its margin of appreciation by examining whether the very essence of the right was impaired, and if not, whether the measure pursued a legitimate aim and whether there existed a reasonable relationship of proportionality between the means employed and the declared aim. In assessing the facts, the Panel noted that, faced with a tsunami of compensation lawsuits within months, UNMIK opted to temporarily prevent any proceedings in these cases. The Panel considered that, at the outset, insofar as it was meant to last a very limited period of time, this measure would appear reasonable, having in mind the anticipated course of action specified by UNMIK in the August 2004 letter, i.e. providing necessary logistical support and creating a database to record and track progress of these claims through the courts.

81. The Panel agreed with UNMIK's reasoning that significant planning and organisation was required to ensure access to justice to those whom UNMIK acknowledged to be "vulnerable minority plaintiffs". The Panel considered this to be a legitimate aim for UNMIK's involvement in the matter. The Panel recalled that a situation where a significant number of claims for large sums of money are lodged against a State may call for some further regulation by the State and that in this respect the States enjoy a certain margin of appreciation. However, the measures taken must still be compatible with Article 6 § 1 of the ECHR.

82. Having found that the aim was legitimate, the Panel then had to go on and determine whether there existed a reasonable relationship between the means and ends. The Panel noted that the restriction – in fact a complete denial of access to a court for individuals who had brought this type of case before a court – lasted four years. UNMIK argued that it initially considered ways of handling the cases outside the court system, but then considered it best that such cases be dealt with by the courts. Although UNMIK recognised the need to issue new legislation and to establish additional institutional capacity, in fact no new legislation to regulate this matter was adopted, and moreover it was not clear which steps, if any, taken in the capacity building area were relevant for the matter, as no attempts to re-organise the system were indicated by UNMIK. In the Panel's assessment, it seemed that UNMIK had hoped for some time that the mass of claims would disappear following negotiations on the status of Kosovo. While hoping for a fruitful outcome to the relevant political negotiations was certainly reasonable for at least some time, failing such agreement the issue should have been revitalised as a matter of urgency. In

summary, in four years, no action capable of solving the issue was taken. It was not argued or demonstrated that the courts were ready to handle these cases by September 2008, some two and a half months before the transfer of UNMIK's competence in the area of justice to EULEX, when the UNMIK Department of Justice advised the courts to process the cases affected by its August 2004 intervention and offered whatever logistical support might be required.

83. In assessing all the elements, the Panel found that UNMIK did not manage to achieve a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The four years of uncertainty experienced by the complainants over whether and when their cases would be processed by the courts was intensified during the relevant time by the fact that the August 2004 letter contained no time-frame to enable anyone to reasonably anticipate when the courts would start processing the cases, if at all. As noted already, no new legislation was adopted in the meantime nor were any mechanisms provided to assist the courts to enable the complainants to have their claims determined. In sum, instead of ensuring access to justice to vulnerable minority plaintiffs, the Panel found that UNMIK in fact denied them this access in violation of Article 6 § 1 of the ECHR. See HRAP, *Petko Milogorić, et al*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08 (opinion of 24 March 2010).

#### **Fairness of Proceedings in General**

84. When a complainant alleges that the proceedings were unfair and led to an unjust outcome, the Panel will only find a violation of the right to a fair trial requirement of Article 6 § 1 of the ECHR when the tribunal's decision is so striking on its face that the proceedings can be regarded as grossly arbitrary. It is not the task of the Panel to act as an appellate court over the HPCC. See HRAP, *Milije Vučković*, case no. 03/07 (opinion of 13 March 2010). However, on the facts in the *Vučković* case the Panel found that the complainant's arguments were mistaken in terms of the facts, the law, or both and were therefore rejected.

#### **Adequate Time to Prepare a Case**

85. Regarding the amount of notice a party should receive to attend a hearing or to submit evidence, the right to a fair trial implies that the notice should afford a sufficient opportunity to comply with the directions of the court or tribunal. See HRAP, *Radovan Parlić*, case no. 01/07 (opinion of 18 June 2010).

86. In the *Parlić* case, the Panel was called upon to examine whether the complainant was afforded a reasonable amount of time to appear before the Special Chamber of the Supreme Court for Kosovo Trust Agency Related Matters in his bid to be included in the list of employees entitled to a share of the proceeds of the privatisation of a formerly socially owned enterprise. In that case, the Special Chamber invited the complainant, who was located in Serbia, to a hearing in Kosovo with less than one week's notice. At that hearing, the complainant was supposed to present his employment booklet, a statement on discrimination, and other evidence. It was unclear from the file when the complainant actually received the summons, and the Panel considered that he might well have received it after the date of the hearing. In assessing the reasonableness of the notice, the Panel looked first to the existing

legislation. Section 34.1 of Administrative Direction 2003/13, which outlined ordinary proceedings before the Special Chamber, provided that a party must be provided two weeks notice of a hearing at which the evidence is to be produced. However, Section 64.1 of that administrative direction provided that Section 34 was not applicable in proceedings relating to complaints against lists of eligible employees for share in privatisation proceeds. As such, no minimum time for the notice of hearings was provided for proceedings such as the complainant's. Therefore, the Panel had to determine whether the notice afforded the complainant sufficient opportunity to comply with the Special Chamber's direction.

87. In order to comply with the Special Chamber's request to present certain evidence, the complainant would have had to make the necessary arrangements to obtain his employment booklet. The complainant was a displaced person living outside Kosovo, and was not represented by a lawyer before the Special Chamber. He argued that he was unable to go back to Kosovo to retrieve his employment booklet himself, due to the lack of security and his own financial situation. On this point he was not contradicted by the SRSG although the SRSG did argue that the complainant could have asked for a postponement of the hearing. However, the order requesting the complainant's presence did not mention such a possibility. To the contrary, it explicitly stated that the hearing would take place as scheduled, even if the complainant did not show up. Moreover, while Section 34.2 of Administrative Direction 2003/13 provided that any of the parties could apply for a postponement of the hearing, and that such application would have been granted "if the party shows that it is prevented from appearing at the hearing for an important reason", Section 34 was not applicable in proceedings relating to complaints against lists of eligible employees. Therefore, the possibility for the complainant to apply for a postponement was not a realistic option at that time. Considering all of the elements, the Panel found that, having regard to the specific situation of the complainant, a one-week notice to appear before the Special Chamber and to present relevant documents was unreasonably short, as such time-limit did not allow him to properly prepare his case and as such there was a violation of Article 6 § 1 of the ECHR in this respect. See HRAP, *Radovan Parlić*, case no. 01/07 (opinion of 18 June 2010).

#### **Assessment of Evidence**

88. As a general rule, it is for the competent courts to assess the evidence before them as well as the relevance of the evidence which parties seek to adduce. The Panel will only interfere where the assessment of the evidence or establishment of the facts by the courts can be impeached on the ground that they were manifestly unreasonable or in any other way arbitrary. The Panel will not substitute its own assessment of the facts for that of the relevant court of tribunal. The Panel's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was assessed, were fair. See HRAP, *Radovan Parlić*, case no. 01/07 (opinion of 18 June 2010).

89. In the *Parlić* case, the complainant sought a share of the proceeds of the privatisation of an enterprise. Before the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters, he argued that he had been employed by a company since 1991 and that he left Kosovo in June 1999. He stated that he believed that he was discriminated against because of the fact that his name was not included in the published list of eligible employees. As to the evidence, he

stated that his employment booklet remained in the company, and that the list of employees of the company could be found in the registers of employees kept in his work unit. The Special Chamber invited the complainant to a hearing where he was supposed to present his employment booklet, a statement on discrimination, and other evidence. The complainant did not appear at the hearing for the reasons described in §§ 85-87, above.

90. Regarding the “discrimination statement”, the Special Chamber applied Article 8.1 of the Anti-Discrimination Law which shifts the burden of proof concerning discrimination from the complainant to the respondent, the Kosovo Trust Agency, after the complainant established “facts from which it may be presumed that there has been direct or indirect discrimination”. The KTA would then have to rebut the presumption, proving that there had been no breach of the principle of equal treatment. The Special Chamber rejected the complaint on the ground that, by failing to attend the hearing and submit the requested evidence, the complainant did not prove that he was working at the time of the privatisation and did not submit a “discrimination statement” at the hearing, thereby failing to submit facts on which direct or indirect discrimination could have been presumed.

91. In its judgment, the Special Chamber accepted the complaints of a number of other applicants, although they were similarly not able to produce their employment booklet. The Special Chamber accepted in these cases that discrimination could result from the “post-war situation created and [the] impossibility [for the applicant] to return to work due to [his or her] personal security concerns” and from the fact “that the name [of the applicant] was not included in the published list although [he or she] met the legal requirements for the inclusion in the list”. The Panel for its part concluded that the only reason the Special Chamber rejected the complainant’s claim, was that he did not submit the “discrimination statement”.

92. The Panel noted that, although the complainant made clear in his complaint to the Special Chamber that he believed he had been the victim of discrimination, the Special Chamber did not seem to have taken that statement into account. It appears that the Special Chamber would consider such allegation only if it had been confirmed formally in a “discrimination statement” of a later date. To the extent that the Special Chamber’s decision was interpreted as meaning that the “discrimination statement” could only be taken into account if it had orally been confirmed by the complainant during the hearing, the Panel assessed this in conjunction with the lack of adequate notice of the hearing (see above §§ 85-87) and concluded that the Special Chamber did not assure him a fair trial, in violation of Article 6 § 1 of the ECHR. See HRAP, *Radovan Parlić*, case no. 01/07 (opinion of 18 June 2010).

### **Independent and Impartial Tribunal**

93. Impartiality, within the meaning of Article 6 § 1 of the ECHR, normally denotes the absence of prejudice or bias. There are two tests for assessing whether a tribunal is impartial: the first consists in seeking to determine a particular decision maker’s personal conviction or interest in a given case and the second in ascertaining whether the decision maker offered guarantees sufficient to exclude any legitimate doubt in this respect.

94. In the *Mitrović* case, the Panel was called upon to determine whether the Housing and Property Claims Commission was an impartial tribunal in light of the fact that the same Panel that decided on matters in the first instance proceedings also decided the request for consideration. See HRAP, *Simo Mitrović*, case no. 06/07 (opinion of 17 December 2010). Since the complainant did not impugn the HPCC members themselves, the Panel applied an objective test, and looked to whether there were ascertainable facts which could raise doubts as to the HPCC's impartiality, whether there was a legitimate reason to fear that it lacked impartiality, and whether the fear could be held to be objectively justified. The Panel also looked to the case law of the European Court of Human Rights, which has held that the participation in appellate proceedings of judges who have dealt with the case in the first instance proceedings may constitute a breach of Article 6 § 1 of the ECHR.

95. The Panel accepted that a situation in which the same HPCC panel decided both the initial request and the request for reconsideration could raise doubts in the complainant's mind as to the impartiality of the HPCC panel. The Panel then continued to assess whether those doubts were objectively justified. In this respect, the nature of the reconsideration proceedings was to be taken into account. The Panel recalled that Section 14.1 of UNMIK Regulation No. 2000/60 allowed any party to a claim to submit a request for reconsideration based "(a) upon the presentation of legally relevant evidence, which was not considered by the [HPCC] in deciding the claim", or "(b) on the ground that there was a material error in the application of the present regulation". While the first ground seemed to restrict the possibility to obtain reconsideration to specified exceptional circumstances, the second ground had the effect of making a request for reconsideration analogous to an appeal on points of law or fact.

96. Furthermore, the obligation for the HPCC to consider not only new evidence, but also the evidence already submitted to it during the initial proceedings, confirmed that a request for reconsideration could not be seen as an extraordinary remedy. In this respect, the Panel departed from the view it expressed in its decision on admissibility in case no. 43/08, *Simić* (decision of 12 December 2008, § 14). In the *Mitrović* case the complainant argued in his request for reconsideration, in substance, that the HPCC had wrongly assessed the elements of the case. According to the complainant, he had sufficiently proven that he had certain rights over the claimed apartment and that there were means to verify that he had lived in the apartment prior to his departure from Kosovo. The Panel found that the HPCC came to its decision on reconsideration after a fresh examination of the already available evidence and after new attempts to verify the documents submitted and the allegations made by the complainant. It concluded that no error had been made and that no new evidence had been adduced which would warrant a change in its decision. It thus appeared to the Panel that the HPCC was in fact invited to have a new look at the elements of the case, and that it actually gave them a fresh look. It did not limit its re-examination to newly adduced evidence.

97. The Panel recalled that, according to the European Court of Human Rights, where the same judges are called upon to determine whether or not they themselves made an "error of legal interpretation or application" in their earlier decision, they are in fact being asked "to judge themselves and their own ability to apply the law". Such a situation is sufficient to hold any fears as to the lack of impartiality of the court to be objectively justified. It followed that the HPCC was not impartial within the meaning



of Article 6 § 1 of the ECHR when it had to examine the request for reconsideration. See HRAP, *Simo Mitrović*, case no. 06/07 (opinion of 17 December 2010).

### **Reasoned Decision**

98. In conformity with “a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based”. However, “the extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case”. See HRAP, *Simo Mitrović*, case no. 06/07 (opinion of 17 December 2010).

99. Also in the *Mitrović* case, the complainant argued that the HPCC did not give credence to the purchase contract he submitted, without explaining the method of verification used by it to come to that conclusion. The Panel noted that, like the initial decision, the decision on reconsideration indeed did not explain why the contract could not be verified. This circumstance raised the question whether that decision could be held to be sufficiently reasoned. The Panel considered that in proceedings specifically designed to deal with mass claims, like in those with the HPCC, the duty to give reasons cannot be understood in the same way as it should be understood in regular proceedings before ordinary courts. It is not for the Panel to elaborate a general theory on this issue. It confined itself to noting that in mass claim proceedings such as those with the HPCC it may be sufficient, from the point of view of the fairness of the proceedings, that the tribunal’s decision indicates in general terms why a given claim is accepted or rejected, without explicit reference to the concrete elements of the particular case, provided that its reasoning finds support in the elements of the file. It is for the Panel to verify whether such support can indeed be found. Indeed, on the basis of the elements of the file, described in detail in the Panel’s opinion, the Panel could not find an indication of arbitrariness with respect to the verification method used by the HPCC. See HRAP, *Simo Mitrović*, case no. 06/07 (opinion of 17 December 2010).

100. The Panel will not however, consider evidence not provided to the deciding body when it was rendering its decision in its assessment as to whether the decision was sufficiently reasoned. In the *Andjelković* case, the complainant provided the Panel with an additional document as proof that she had occupied the property in question at the relevant time. It appears, however, that the document was never submitted to the HPCC. Thus, whatever its probative value, the Panel held that it would have been for the HPCC to examine the document and make conclusions as to its evidentiary value. The Panel, for its part, could only review the assessment made by the HPCC and could not come to conclusions based on the submission of evidence which was never submitted to the body whose decision making was the subject of the complaint before it. The complainant’s initial failure to provide such information to the HPCC could not be corrected in the proceedings before the Panel. See HRAP, *Vesna Andjelković*, case no. 11/07 (opinion of 17 December 2010).

### **Length of Proceedings – Court Proceedings**

101. With regard to the length of proceedings in civil matters, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the

conduct of the complainant and the relevant authorities and what was at stake for the complainant in the dispute. It is the duty of the relevant authorities to organise their legal system so as to allow the courts to comply with the requirements of Article 6 § 1 of the ECHR, including that of a trial within a “reasonable time”. Nonetheless, a temporary backlog of court business does not entail liability on the part of the authorities if they take appropriate remedial action with the requisite promptness. See HRAP, *Gani Emini*, case no. 17/08 (opinion of 18 June 2010) and HRAP, *Simo Mitrović*, 06/07 (opinion of 17 December 2010).

102. In the *Emini* case, the complainant was involved in an employment dispute with his former employer and had filed civil proceedings to protect his labour rights in 2003. The proceedings lasted approximately five years and the complainant argued, amongst other issues, that the length of the proceedings were unreasonably long in violation of Article 6 § 1 of the ECHR. The Panel noted that approximately two and half years (of which about one and a half years after 23 April 2005, see above, §§ 70-72) passed with the file at the district court level. The Panel accepted the court’s explanation that the delay was caused by a backlog of cases and understaffing of judges dealing with civil matters at the court. The Panel further acknowledged the difficulties faced by the courts in Kosovo in light of the post conflict situation in Kosovo. On the other hand, the Panel noted that no appropriate remedial action appeared to have been taken to address the situation, either by UNMIK or by the courts and that in any case, if the measures were taken, they did not appear to have had any effect during the relevant period. As such, considering what was at stake for the complainant, his means of employment and therefore his means of subsistence itself, the Panel found that the court did not display the required, special diligence which was required of it under both the applicable law and the ECHR. It thus concluded that the length of proceedings in this case was excessive and failed to satisfy the reasonable time requirement of Article 6 of the ECHR. See HRAP, *Gani Emini*, case no. 17/08 (opinion of 18 June 2010).

103. In *Mitrović*, the relevant proceedings before the HPCC began on 21 March 2002 and ended on 9 May 2007, when the complainant received the decision on reconsideration. However, the period to be considered started from the date of the Panel’s temporal jurisdiction, which is 23 April 2005. The total duration of the proceedings was thus five years, one month and eighteen days, of which two years and sixteen days fell to be examined by the Panel. In assessing the facts, the Panel accepted that the *Mitrović* case presented a certain complexity, but the Panel was of the opinion that the issues in the case were by no means exceptional. The Panel further noted that the complainant did not contribute to any delay in the proceedings. With respect to the conduct of the authorities, the Panel noted that there were considerable delays in the initial proceedings although much of that period was outside the Panel’s jurisdiction as it took place prior to 23 April 2005. After that period of delay however, the initial proceedings moved on without significant delays and the initial decision was adopted on 21 October 2005 and certified on 5 December 2005. The complainant was informed about the decision on 12 January 2006 and the decision was sent to him on 16 March 2006. Upon receipt of the request for reconsideration by the HPD Office in Belgrade on 24 March 2006, the HPD contacted the neighbours for witness statements, notified the respondent of the request, contacted the complainant by telephone for further information, and delivered the claim processing report on 27 October 2006. The HPCC adopted its decision on 11

December 2006, which was certified on 23 March 2007 and sent to the complainant on 7 May 2007. However, unlike in *Emini*, the Panel took into account the relative speediness of the procedure during the period under its review and the high number of cases received by the HPD for adjudication by the HPCC, as well as the logistical difficulties faced in the context of post-conflict Kosovo, and found that, in the light of all the circumstances of the case, a reasonable time was not exceeded and there was no violation of Article 6 § 1 of the ECHR in this respect. It was also significant that the proceedings took place before a mass claims tribunal as opposed to the regular courts, and involved an employment dispute, as opposed to competing claims for residential property. See HRAP, *Simo Mitrović*, 06/07 (opinion of 17 December 2010).

### **Length of Proceedings – Execution of Decisions**

104. The execution of a decision by a tribunal is an integral part of the trial for the purposes of Article 6 of the ECHR. As such, an unreasonably long delay in the enforcement of a binding judgment may be a breach of the ECHR, depending on the complexity of the enforcement proceedings, the behaviour of the complainant and the competent authorities, and the amount and nature of the award in question. The complexity of the enforcement proceedings cannot relieve the authorities of their obligation under the ECHR to guarantee everyone the right to have a binding and enforceable decision enforced within a reasonable time. The relevant authorities must organise their legal systems in such a way as to ensure the execution of judgments within a reasonable time. As a general benchmark, the Panel adopted the European Court of Human Rights' approach that delays of more than one year in the execution of a decision are *prima facie* unreasonable. See HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010).

105. In the *Kušić* case, the complainant had purchased a flat in Kosovo in the mid-1990s. Previously however, another person had been allocated the same flat, but had subsequently lost his job and the flat which had been allocated to him, allegedly due to discrimination. Following the conflict in Kosovo, and the departure of many non-Albanians from Kosovo, the previous occupant re-occupied the same flat. Both the complainant and the previous occupant filed claims before the HPCC. The HPCC issued a decision finding that both persons had valid rights to the apartment. The HPCC confirmed this finding in its decision on reconsideration of 31 March 2006.

106. In accordance with UNMIK Regulation No. 2000/60, the HPCC granted the previous occupant the right to occupy the flat, provided that he would pay a sum for it. The amount of that sum would be determined by the HPD. Once he was notified of the amount, he would have 120 days to pay it to the HPD, and in that case the complainant would then be compensated by the HPD for the amount she paid for the purchase of the flat, plus a percentage of its current market value, as well as for the costs of any improvements she might have made to the flat. If the previous occupant would not pay the sum, the complainant would be able to occupy the property. However, according to information provided by the KPA at the end of 2008, its decision had not been implemented because the rules to regulate compensation had not yet been issued by the KPA. According to the Annual Report 2009 of the KPA, the issue of the compensation scheme was still under discussion by the end of 2009.

107. In assessing the elements above in the *Kušić* case, the Panel found that at the date on which UNMIK's authority lapsed, the decision of the HPCC was already pending execution for one year and nine months. At that time, the complainant could not foresee when the decision would be executed. Regarding the complexity of the execution proceedings and the conduct of the complainant, the Panel found that there were no execution proceedings to speak of, and the complainant did not contribute to the delay in execution. UNMIK relied on the complex legal and political situation in Kosovo to defend the delay surrounding the promulgation of the legislation necessary for the execution of the decision, despite the fact that the legislation in question was envisaged in UNMIK Regulations as early as 2000.

108. The Panel accepted that the relevant authorities enjoy a rather wide discretion and especially so in the unique context in which UNMIK operates. However, the formula for determining the amount of compensation due was still pending adoption after nine years.<sup>24</sup> While positive steps began with the retention of a consultant to work on the formula for compensation in 2004, UNMIK had not put forward any convincing arguments as to why the necessary formula remained unimplemented four years later in December 2008, when it ceased to be responsible for the functioning of the KPA. The complainant was therefore faced with the uncertainty of an indeterminate wait.

109. Furthermore, given that upon the determination of the sum to be paid, the previous occupant would have the choice between paying the sum (in which case he would be entitled to possession of the apartment, while the complainant would receive compensation) or not paying the sum (in which case he would not be entitled to possession of the apartment, while the complainant would be entitled to possession) the Panel concluded that the nature of the award itself was not trivial. The difference between the two possible outcomes of this process was significant and would have a substantial impact on the complainant. This divergence in possible outcomes led the Panel to conclude that the nature of the award was an important factor to be taken into account in the *Kušić* case.

110. Having regard to all the elements mentioned above, the Panel concluded that the delay in the execution of the decision of the HPCC was unreasonably long and that a violation of Article 6 of the ECHR had taken place. See HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010).

### **6.3.5. Right to Peaceful Enjoyment of Possessions**

111. In the *Spahiu* case, the Panel held that Article 1 of Protocol No. 1 to the ECHR, which enshrines the right to peaceful enjoyment of one's possessions, requires at the outset that any interference with one's possessions must be lawful. In that case, the Panel found that the delegation of authority from the Council of the Independent Media Commission to the Executive Officer of the Independent Media Commission regarding the authority to order sanctions (in this case confiscation) was not done in accordance with the applicable law at that time. Since the delegation was unlawful, the subsequent order from the Executive Officer of the Independent Media Commission to confiscate the complainant's broadcasting equipment was also

---

<sup>24</sup> It remains pending as of the publication of this report.

therefore unlawful and in violation of Article 1 of Protocol No. 1 to the ECHR. See HRAP, *Nexhmedin Spahiu*, case no. 02/08 (opinion of 26 November 2010).

112. In the *Kušić* case, the Panel held that the binding and enforceable decision of the HPCC created a right to either compensation or repossession of the claimed property. This was not disputed by the parties. The Panel, following the jurisprudence of the European Court of Human Rights, held that such judicially created rights, in this case either the right to compensation or the right to full enjoyment of the property, should be considered a “possession” within the meaning of Article 1 of Protocol No. 1 to the ECHR. As such, the authorities’ prolonged failure to enforce the HPCC decision in favour of the complainant violated her right to peaceful enjoyment of her possessions. See HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010).

113. In *Mitrović*, the Panel noted that the question arose as to whether Article 1 of Protocol No. 1 to the ECHR was applicable. The concept of “possessions” referred to in the first sentence of the first paragraph of that provision has an autonomous meaning. Article 1 of Protocol No. 1 to the ECHR applies only to a person's existing possessions. In certain circumstances, a “legitimate expectation” of obtaining an “asset” may also enjoy the protection of Article 1 of Protocol No. 1, provided that there is a sufficient basis for the proprietary interest in the applicable law, for example where there is settled case-law of the courts confirming its existence. However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of the law and the complainant's submissions are subsequently rejected by the courts. In the *Mitrović* case the HPCC held that the complainant failed to show that he had ever obtained possession of the property claimed. The complainant’s complaint essentially amounted to an objection to the regularity and the outcome of the proceedings before the HPCC. The Panel did not exclude that UNMIK could be held responsible for the adverse effects on the complainant’s proprietary interests caused by the determination made by the HPCC, if the latter’s decision were to be regarded as arbitrary or manifestly unreasonable. However, the Panel found, under Article 6 § 1 of the ECHR (in relation to a fair hearing), that the HPCC gave sufficient reasons for its decision and that its assessment of the elements of the case could not be regarded as arbitrary. The Panel therefore concluded that the complainant had no “legitimate expectation”, based on the applicable law, of realising his claim for possession of the apartment. It followed that there was no violation of Article 1 of Protocol No. 1 to the ECHR. See HRAP, *Simo Mitrović*, 06/07 (opinion of 17 December 2010).

114. In the *Parlić* case, the Panel also stated that UNMIK could be held responsible for the adverse effects on the complainant’s proprietary interests caused by a determination made by the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, if the latter’s decision were to be regarded as arbitrary or manifestly unreasonable. However, the Panel did not consider it necessary to examine this further, having already found a violation of Article 6 § 1 of the ECHR. See HRAP, *Radovan Parlić*, case no. 01/07 (opinion of 18 June 2010).

#### **6.3.6. Prohibition of Discrimination**

115. A generally applicable rule, although apparently neutral, may have the effect of treating people differently, *e.g.* on the ground of their ethnic origin. Where a group of

persons is, because of its ethnic origin, in a vulnerable position compared to persons of another origin, the competent authorities are obliged to give special consideration to the specific needs of that particular group. This special consideration is required both in the relevant regulatory framework and in the decisions in particular cases. See HRAP, *Radovan Parlić*, case no. 01/07 (opinion of 18 June 2010).

116. In the *Parlić* case, the complainant sought to be included in the list of employees eligible for a share of the proceeds of the privatisation of a formerly socially owned enterprise. Under Section 10.4 of UNMIK Regulation No. 2004/45, former employees who were not on the list, could nevertheless claim “that they would have been so registered and employed, had they not been subject to discrimination”. The complainant argued that it should have been sufficiently clear to the Special Chamber that it was because of his Serbian origin that he was obliged to leave Kosovo, and that it was therefore because of discrimination that he was no longer employed at the time of privatisation. According to the complainant the Special Chamber failed to admit that the complainant had been discriminated against, and thus itself violated the right not to be discriminated against. The Panel considered that the complainant in substance complained about the failure by the Special Chamber to correct an existing inequality of which the complainant and other Serbian former employees were the victims. The SRSJ argued that, even if the complainant had suffered discrimination, this discrimination would have stemmed from the circumstances of the Kosovo post-1999 conflict situation and would not entail any responsibility of UNMIK, on behalf of the KTA or the Special Chamber. The Panel found that such argument was not pertinent. Even if the discrimination resulted from a situation for which UNMIK was not responsible, it did not reduce its obligation to give special consideration to the specific needs of the displaced former employees in privatisation cases. See HRAP, *Radovan Parlić*, case no. 01/07 (opinion of 18 June 2010).

## **7. Recommendations of the Panel**

117. In 2010, the Panel adopted a number of opinions on the merits where it found violations of human rights for which UNMIK was responsible. A recurring difficulty was the issue of what recommendations to make in a situation where UNMIK is no longer able to have a direct impact on decisions being made in Kosovo. 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 authorities to remedy other deficiencies identified by the Panel. This situation required the Panel to be cognizant of such limitations while making recommendations that would have a beneficial impact on the human rights situation of the affected complainants.

118. In some instances, the Panel recommended non-pecuniary compensation for the violation (see HRAP, *Petko Milogorić, et al*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08 (opinion of 24 March 2010) and HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010), amongst others), while in other cases, the Panel recognised that the finding of a violation was an adequate redress in the circumstances (see HRAP, *Gani Emini*, case no. 17/08 (opinion of 18 June 2010)). In other cases still, the Panel recommended that UNMIK itself recognise that a violation has taken place and it indicated that this acknowledgment would be sufficient reparations in the circumstances. (see HRAP, *Nexhmedin Spahiu*, case no. 02/08 (opinion of 26

November 2010) and HRAP, *Simo Mitrović*, and case no. 06/07 (opinion of 17 December 2010)).

119. In other cases, the Panel would have recommended certain concrete actions for UNMIK to remedy the situation, if it was not for the fact that UNMIK was no longer capable of exercising its mandate under United Nations Security Council resolution 1244 following the unilateral declaration of independence by the Kosovo authorities and subsequent developments on the ground. In recognition of the fact that UNMIK could no longer itself take the necessary steps to remedy a situation, the Panel has recommended that UNMIK share its opinion with the current actors in that field merely to make them aware of the opinion and thus the issues at stake (see HRAP, *Gani Emini*, case no. 17/08 (opinion of 18 June 2010)), or in other cases to actively encourage the competent authorities to complete the necessary changes that would enable the situation to be rectified (HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010)). Indeed, in *Kušić* the Panel recommended that UNMIK “endeavour, with all the diplomatic means available to it vis-à-vis the Kosovo authorities, to obtain assurances that the legislation necessary for the execution of such HPCC decisions will be promulgated without delay” (see HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010) § 74). The Panel used a similar formula in *Milogorić et al.* recommending that UNMIK “endeavour, with all the diplomatic means available to it vis-à-vis the Kosovo authorities, to obtain assurances that the cases filed by the complainants will be duly processed” (HRAP, *Petko Milogorić, et al.*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08 (opinion of 24 March 2010) §52). At the same time, in both *Kušić* and *Milogorić, et al.*, the Panel also found it appropriate to recommend adequate compensation for non-pecuniary damage related to the non-execution of the decisions in the complainants’ property cases before the HPCC.

120. In every complaint to date in which the Panel has found a violation, the Panel has recommended that UNMIK take immediate and effective measures to implement its recommendations and to inform the complainant and the Panel about further developments in the case. The implementation is discussed further in the next section.

## 8. UNMIK’s Reactions to the Panel’s Recommendations

121. Following the adoption of an opinion on the merits in which the Panel finds a violation of human rights which is attributable to UNMIK, the Panel communicates that opinion to the complainant and to UNMIK. In the communication to UNMIK, the Panel makes reference to Sections 17.3 and 17.4 of UNMIK Regulation No. 2006/12. Section 17.3 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.” While it appears from internal correspondence to the Panel that UNMIK is generally following the recommendations made by the Panel, it is also true that out of the 13 opinions adopted by the Panel finding a violation of human rights since it began operating, UNMIK has only published its decision on the implementation of the Panel’s recommendations in one case. See HRAP, *Nadica Kušić*, case no. 08/07 (opinion of 15 May 2010). Thus, the remaining twelve opinions finding a violation on the merits remain without a public response from UNMIK, including one opinion which was adopted by the Panel in late 2008 (see HRAP, *Shaip Canhasi*, no. 04/08 (opinion of 12 November 2008)).

The Panel sincerely hopes that UNMIK is able to issue public responses to these complaints in the near future.

122. In *Kušić*, case no. 08/07, UNMIK issued the following press release in response to the Panel's opinion:

“After reviewing the Human Rights Advisory Panel (HRAP) opinion in the case of Nadica Kušić, Special Representative of the Secretary-General Lamberto Zannier informed HRAP on 25 May [2010] of the following in relation to its recommendations:

- UNMIK will request the European Union Rule of Law Mission (EULEX), which has taken over responsibilities in the area of justice in Kosovo, to liaise with relevant Kosovo authorities in order to ensure that all possible steps are taken to adopt administrative measures necessary for the execution of all Housing and Property Claims Commission (HPCC) decisions without delay.
- Current UN General Assembly resolutions do not allow the Organization or its Missions to pay compensation other than for material damage or physical harm. UNMIK therefore is not in a position to pay any compensation for human rights violations that may have occurred. UNMIK will, however, continue to address the issue with the United Nations Headquarters in New York with the aim of drawing the attention of the General Assembly to this problem, also taking into account of the human rights standards that prevail in the context in which UNMIK is operating.
- UNMIK will also, as recommended by the Panel, inform the complainants and the Panel of further developments in the case.”

123. The Panel welcomes the constructive approach adopted by UNMIK in its response to this opinion and its prompt publication and distribution. Although the Panel has not yet received any further information from UNMIK on developments in this case, the Panel trusts that UNMIK will provide further information as it becomes available.

124. However, UNMIK's position on the issue of compensation for non-pecuniary damage is that the relevant regulations of the United Nations and resolutions from the United Nations General Assembly prevent it from paying any compensation to the complainants in cases of human rights violations. The Panel recognises that the payment of compensation raises complex legal issues and remains hopeful that that this may be resolved in the future. In this context, the Panel recalls the recommendations from the Venice Commission's Opinion on the Existing Mechanisms to Review the Compatibility of Acts by UNMIK and EULEX in Kosovo on 21 December 2010, which suggested some creative avenues forward on the issue of compensation.

125. In another situation worth mentioning in this regard, the Panel made a number of recommendations in the *Spahiu* case, including that UNMIK should recognise that a violation of Article 1 of Protocol No. 1 to the ECHR occurred. See HRAP,



*Nexhmedin Spahiu*, case no. 02/08 (opinion of 26 November 2010). UNMIK then sent a letter to the complainant, with a copy to the Panel, which later appeared in the Prishtinë/Priština media. The letter stated that UNMIK recognised that such a violation took place and indicated that a press release would be issued shortly. Although a press release has not yet been issued, the letter from UNMIK to the complainant recognising that a violation took place did receive wide coverage in Kosovo-based media.

**Annexes**

Annex A: UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 23 March 2006

Annex B: UNMIK Administrative Direction No. 2009/1, Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 17 October 2009

Annex C: Human Rights Advisory Panel, Rules of Procedure, Rule 33 (adopted on 12 February 2010)

Annex D: Human Rights Advisory Panel Case Flow Chart

Annex A: UNMIK Regulation No. 2006/12

**UNITED NATIONS**

United Nations Interim  
Administration Mission in  
Kosovo



UNMIK

**NATIONS UNIES**

Mission d'Administration  
Intérimaire des Nations  
Unies au  
Kosovo

UNMIK/REG/2006/12  
23 March 2006

**REGULATION NO. 2006/12**

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

The Special Representative of the Secretary-General,

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

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

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

Hereby promulgates the following Regulation:

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

Section 1

Establishment of the Human Rights Advisory Panel

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

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

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

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

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

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

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

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

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

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

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

## Section 2 Temporal and Territorial Jurisdiction

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

## Section 3 Admissibility Criteria

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

3.2 The Advisory Panel shall not deal with any complaint that

(a) Is anonymous; or

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

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

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

### Section 4 Seat and Composition

4.1 The Advisory Panel shall have its seat in Pristina.

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

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

### Section 5 Appointment of the Members

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

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

### Section 6 Oath or Solemn Declaration

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

"I do hereby solemnly declare that:

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

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

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

Section 7  
Immunity and Inviolability

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

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

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

Section 8  
Financial and Human Resources

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

Section 9  
Secretariat

A full-time secretariat shall service the Advisory Panel.

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

Section 10  
Submission of complaints and *Ex Officio* Representatives

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

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

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

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

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

### Section 11 Written Submissions

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

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

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

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

### Section 12 Confidentiality of Communications

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

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

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

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

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

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

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

Section 14  
Oral hearings

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

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

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

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

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

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

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

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

Section 17  
Findings and Recommendations of the Advisory Panel

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

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



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

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

Section 18  
Rules of Procedure

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

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

**CHAPTER 4: Final Provisions**

Section 19  
Implementation

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

Section 20  
Applicable Law

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

Section 21  
Entry into force

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

Søren Jessen-Petersen  
Special Representative of the Secretary-General

Annex B: UNMIK Administrative Direction No. 2009/1

**UNITED NATIONS**

United Nations Interim  
Administration Mission in  
Kosovo



UNMIK

**NATIONS UNIES**

Mission d'Administration  
Intérimaire des Nations  
Unies au  
Kosovo

UNMIK/DIR/2009/1  
17 October 2009

---

**ADMINISTRATIVE DIRECTION NO. 2009/1**

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

The Special Representative of the Secretary-General,

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

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

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

Hereby promulgates the following Administrative Direction:

Section 1  
Public Hearings

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

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

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

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

## Section 2 Issues of Admissibility

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

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

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

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

## Section 3 Appointment and Resignation of Panel Members

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

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

Section 4  
Publications of the Advisory Panel

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

Section 5  
Cut-off Date for Submission of Complaints

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

Section 6  
Entry into Force

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

Lamberto Zannier  
Special Representative of the Secretary-General

Annex C: Human Rights Advisory Panel, Rules of Procedure, Rule 33 (adopted on 12 February 2010)

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

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.

## The HRAP procedure

