



The Human Rights Advisory Panel

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Annual Report 2013



Foreword

The sixth year of activity of the Human Rights Advisory Panel differed considerably from that of the preceding periods. By the beginning of 2013, all pending cases (with a few exceptions) had already been declared admissible. Therefore, throughout the year, the Panel was able to focus almost exclusively on adopting opinions on the merits; deciding whether and to what extent facts alleged by the complainants had led to different violations of human rights by UNMIK.

Over the course of 2013, the Panel issued a number of important opinions. Those opinions particularly deserving of attention came from cases involving allegations of a lack of an adequate police investigation in connection with abductions, disappearances, and killings related to procedural obligations under Article 2 of the European Convention on Human Rights, as well as allegations of violations of Article 3 of the Convention against victims and close relatives. The importance of the right to truth has also been recognized by the Panel.

In these opinions, as well as in other cases, the Panel continues to elaborate its own jurisprudence, taking into consideration the international human rights standards expressed in the case law of the European Court of Human Rights and other international bodies, including, in particular, the UN Human Rights Committee.

The Panel had hoped that the small, but professional and dedicated team of lawyers that had been assembled in 2012 would be able to remain intact in 2013, allowing the Panel's Secretariat to handle pending cases promptly and with appropriate quality. This seemed even more likely considering that the Panel's Secretariat received an additional legal officer post that was intended to fill the gap created when the UNDP contract, financed by the Government of Sweden, ended in the spring of 2013. Responding to the Panel's request, UNMIK made it possible for the Secretariat to keep one legal officer on a temporary contract, pending the completion of the regular recruitment process. However, despite the Panel's expectations, the recruitment process had still not been completed by the beginning of 2014.

Overall, the Panel's co-operation with UNMIK in ongoing cases continued to proceed well despite a small number of glitches. In general, the SRSG's responses to the Panel's opinions and recommendations have been much quicker than in previous years in respect of informing the public of the decisions made in response to the Panel's opinions. In addition, complainants have been receiving letters from the SRSG, usually without any significant delay. As well as explaining his position, the SRSG has also expressed his "deep regrets" about the violations identified by the Panel. However, this falls far short of fulfilling the Panel's repeated recommendation to make a public apology for these violations.

Also, as highlighted already in previous annual reports, there continues to be a lack of visible indications of the preparedness within the UN system to ensure adequate reparations, including financial compensation, to victims of human rights violations identified by the Panel.

The Panel's activity and case law is the subject of growing interest, including amongst circles dealing with the international protection of human rights, as evidenced by academic and other publications. The Panel's experience is already considered an important part of the continuing debate about international organisations' accountability for human rights violations, as demonstrated by the recent resolution related to this question adopted by the Parliamentary Assembly of the Council of Europe in January 2014. The work of the Panel should be seen also in the light of the message sent recently by the UN Secretary-General in his new initiative "Rights Up Front" to improve UN action to safeguard human rights around the world.

Marek Nowicki

Presiding Member

Human Rights Advisory Panel

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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 2006,¹ 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 sixth 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.* Although the Panel cannot order compensation or specific relief, it can determine whether UNMIK is responsible for a violation of human rights and, if so, it may make recommendations to the Special Representative of the Secretary-General (SRSG) in Kosovo.
2. Despite severe staffing shortages in the Secretariat for a sizable portion of the year, the Panel was able to have a very successful period of processing complaints. This annual report covers the period from 1 January 2013 to 31 December 2013, during which time the Panel conducted 11 sessions, including having deliberations through electronic means. During this year, the Panel adopted 56 opinions on the merits (concerning 79 complaints), found a further 4 complaints admissible or admissible in part, declared 6 complaints inadmissible and rejected 2 requests for revision of former decisions. Out of a total of 527 registered complaints, a few of which involved large numbers of named complainants, a total of 342 are now closed, while the remaining 185 complaints are pending at various stages of the proceedings. In 2013, the Panel issued decisions and opinions for 90 cases. In addition, the Panel continued its regular work on all pending cases.
3. Until May 2013, the Panel and the Secretariat continued to receive funding from the Swedish government to provide the support for an additional lawyer, whose contract was managed by the United Nations Development Programme (UNDP). The Panel also liaised with several other Ambassadors from embassies in Kosovo to request further funding for the UNDP sponsored lawyer, but with no positive results.
4. In 2013, the Presiding Member of the Panel visited the European Court of Human Rights in Strasbourg, France, where he liaised with the President of the European Court of Human Rights, as well as other European Court judges.² These meetings proved extremely productive and the information exchanged highlighted the congruent nature of the jurisprudence of the two institutions.
5. On behalf of the Panel, the Secretariat liaised with the Office of the High Commissioner for Human Rights in Kosovo, Amnesty International and the legal assistance project “Further Support to Refugees and IDPs in Serbia”. In addition, the Secretariat gave presentations to visiting students from the European Master’s Degree in Human Rights and Democratisation, based in Venice.
6. In 2013, the Panel and Secretariat continued to make extensive usage of other resources to collect information that it was unable to gather from the complainants’ or the SRSG’s

¹ Attached as Annex A.

² European Court of Human Rights, *Annual Report 2013*, Strasbourg, 2014, p. 55.

submissions to the Panel. For example, the Panel was provided with invaluable information, including relevant investigative documents that had been heretofore unobtainable, from the Special Prosecution Office in Kosovo, the Basic Court of Mitrovicë/Mitrovica (sitting in Vushtrri/Vučitrn), the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters (Special Chamber), the Privatization Agency of Kosovo and the Court Liaison Office of the Kosovo Ministry of Justice. The information received was communicated to all parties to complaints before the Panel.

7. The Secretariat also liaised with individual complainants as well as organisations with ties to the cases, such as the Association of the Families of the Kidnapped and Murdered in Kosovo and Metohija, to gather relevant information when required.

2. Composition of the Panel

2.1. Panel Members

8. The three Panel members, nominated by the President of the European Court of Human Rights and (re-)appointed by the SRSG in accordance with UNMIK Regulation No. 2006/12 as of 1 January 2013 were Mr Marek Nowicki (Poland), Ms Christine Chinkin (United Kingdom/Australia) and Ms Françoise Tulkens (Belgium)³. The Panel elected Mr Marek Nowicki as its Presiding Member in January 2008 and re-elected him as its Presiding Member in 2009, 2010, 2011, 2012 and 2013⁴.
9. Biographical information is provided hereunder on the members of the Panel.
10. **Marek A. Nowicki** (January 2007- present) is a Polish citizen, a human rights lawyer, and a member of the Warsaw Bar Chamber since 1987.
11. 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.
12. Mr Nowicki was one of the “eminent lawyers” appointed by the Parliamentary Assembly of the Council of Europe to assess the legal and human rights situation in Moldova (1994) and Azerbaijan (1997). In 1996 and 1998, the Council of Europe asked him to serve as a human rights expert during the evaluation of the compatibility of the legal systems of Georgia and the Russian Federation with the standards of the European Convention on Human Rights. He served as a human rights expert for the European Commission for

³ Ms Tulkens’s appointment and re-appointment by the SRSG covers the same time-period but was effective from 14 September 2012 until 13 September 2013 and 14 September 2013 until 13 September 2014.

⁴ HRAP Rules of Procedure, Rule 6.

Democracy through Law (Venice Commission) and the Directorate General of Human Rights and Legal Affairs of the Council of Europe.

13. Mr Nowicki was a founding member of the Helsinki Foundation for Human Rights in Warsaw and its president from November 2003 until February 2008. Currently he chairs the Council of the Foundation. 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 the European Convention on Human Rights at the National School for Public Administration in Warsaw. He is a member of the Selection Committee of the Václav Havel Human Rights Prize of the Parliamentary Assembly of the Council of Europe.
14. **Christine Chinkin** (February 2010- present) a dual British/Australian citizen, Fellow of the British Academy, is currently Professor of 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.
15. 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). From 2004-2012, she was Director of Studies of the International Law Association. She is a member of the Advisory Council of the International Centre for the Legal Protection of Human Rights in London (INTERIGHTS) and of the IBA Human Rights Council. 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).
16. Ms Chinkin has been a consultant on international law to the Asian Development Bank; on trafficking in women to the UN Office of the High Commissioner for Human Rights; on Peace Agreements and Gender to the UN Division for the Advancement of Women and UNIFEM. She was a Scientific Expert to an Ad Hoc Committee of the Council of Europe on the drafting of the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence. She was a Member of the Fact-Finding Mission to Beit Hanoun pursuant to United Nations Human Rights Council Resolution S 3/1, May 2008 and of the UN Fact-Finding Mission on the Gaza Conflict in 2009, and of the IBA HR Council Fact-Finding Mission to Malawi on the Rule of Law in January 2012.

17. **Françoise Tulkens** (September 2012- present) a Belgian citizen, has a Doctorate in Law, a Master's degree in Criminology and a Higher education teaching certificate (*agrégation de l'enseignement supérieur*) in Law.
18. She was also a researcher at the Max Planck Institute for Foreign and International Criminal Law (Freiburg-im-Breisgau, Germany). She was a Professor at the University of Louvain (Belgium) and has taught in Belgium as well as abroad – as a Visiting Professor at the Universities of Geneva, Montreal, Ottawa, Paris I, Rennes, Strasbourg and Louisiana State University – in the fields of criminal law (general part), comparative and European criminal law, juvenile justice and human rights protection systems.
19. From November 1998 to September 2012, she was a Judge in the European Court of Human Rights, serving as Section President from January 2007 and as Vice-President of the Court from February 2011.
20. Ms Tulkens is the author of many publications in the areas of human rights and criminal law and also co-author of reference books: *Introduction au droit pénal. Aspects juridiques et criminologiques* (9th edn., 2010) and *Droit de la Jeunesse: Aide, Assistance et Protection* (2000). She also co-edits: *Code de droit international humanitaire* (6th edn., 2013), *International Humanitarian Law Code* (1st edn., 2013) and *Code de droit international des droits de l'homme* (5th edn., 2014). She is a member of editorial boards of a number of scientific journals, among which the *Revue trimestrielle des droits de l'homme*, the *Journal of International Criminal Justice* and the *Inter-American and European Human Rights Journal*.
21. In 2013 she has been appointed as a member of the Scientific Committee of the Fundamental Rights' Agency (FRA) of the European Union. She is a member of the Scientific Committee of the Brussels Bar Human Rights Institute and of the Board of Trustees of the Academy of European Law.
22. She holds honorary doctorates from the Universities of Geneva, Limoges, Ottawa and Ghent. She has been an Associate Member of the Belgian Royal Academy of Sciences, Literature and Fine Arts since 2011.
23. Ms Tulkens is currently Chair of the Board of Governors of the King Baudouin Foundation.

2.2. Secretariat Staff

24. The Secretariat Staff consists of an Executive Officer, two legal officers and two administrative assistants.
25. **Andrey Antonov**, a Russian citizen, joined the Secretariat in June 2011 as Executive Officer. Previously, Mr Antonov worked as an Investigator with the Investigation Division of the Office of Internal Oversight Services at the UN HQ (2011), as a Conduct and Discipline Officer at the United Nations Mission in Sudan (2009-2011), as the Legal

Advisor at the United Nations Integrated Office in Sierra Leone (2008-2009), as a legal officer with the Criminal Division of the Department of Justice (DOJ) of the United Nations Mission in Kosovo (UNMIK) (2005-2008), and as a legal officer at the Judicial Integration Section of UNMIK's DOJ (2003-2005). Before joining the United Nations, Mr Antonov served with the Russian Ministry of Internal Affairs (MIA), as a criminal investigator with the transport police department (Anapa, 1996), and a lecturer/senior lecturer in Criminal Procedure and Criminal Investigation (Krasnodar University, Russian MIA, 1999-2003). He first arrived in Kosovo in 2000 as a member of the Russian Contingent seconded by the Russian MIA to serve with UNMIK Police, where he worked as a legal officer at UNMIK's Police Commissioner's Legal Office until 2002. Mr Antonov holds a PhD in Law, specializing in Criminal Procedure, Criminal Investigation and Crime Detection from the Volgograd Law Academy of the Russian MIA and an LLM in Law from the same institution. He has also authored more than 30 publications in Russian periodicals related to different aspects of criminal investigations.

26. **Anna Maria Cesano**, an Italian citizen, joined the Secretariat in May 2011 as Human Rights Specialist on secondment from UNDP and through funding provided by the Swedish Government. Previously, Ms Cesano worked as a rule of law officer at the Access to Justice Programme of the United Nations Development Programme in Sierra Leone (2010-2011), as a liaison officer at the United Nation High Commissioner for Refugees in Tanzania (2009) and as a human rights officer at the United Nations Integrated Office in Sierra Leone (2007-2009). Before joining the United Nations, Ms Cesano worked at the University of Siena, Italy (2006-2007) as a researcher on the European system for the protection of human rights. Ms Cesano first worked in the Balkans in 2005 with the Organization for Security and Cooperation in Europe, Serbia and Montenegro. She holds a Masters Degree in Human Rights and Conflict Management from the Sant' Anna School of Advanced Studies of Pisa and a Master of Laws degree from the Catholic University of Milan, Italy.
27. **Brandon Gardner**, an American citizen and former member of the Pennsylvania Bar, joined the Secretariat as a legal officer in October 2011. Previously, Mr Gardner served as a Legal Advisor to the Elections Complaints and Appeals Commission on behalf of the Organization for Security and Cooperation in Europe's Mission in Kosovo (2009-2011).

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

28. **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 April 2000 as an administrative clerk with the UNMIK Police Department. In October 2002, she took up a position as an administrative assistant with the UNMIK Department of Justice. In March 2012, Ms Martinović's post was re-classified to legal

assistant.

29. **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.

2.2.1. Secretariat Staff who served in 2013

30. **Daniel Trup**, a British/French citizen, joined the Secretariat in June 2012 as a legal officer. Qualifying as a solicitor in 2000, Mr Trup has worked in the field of criminal law both in the United Kingdom and abroad. Prior to joining the Secretariat, Mr Trup had worked for the European Union Rule of Law Mission in Kosovo as senior legal officer in the Special Prosecutor's Office (2009-2012) and as legal officer in the Prosecutor's Office in the State Court of Bosnia and Herzegovina (2008-2009). Mr Trup holds an LLM in International Law from the University of Kent, and a Bachelor of Arts in Politics and History from the University of London. On 9 September 2013, Mr Trup joined the Office of Staff Legal Assistance in the Office of Administration of Justice of the United Nations in Nairobi, Kenya.

3. Regulatory Framework

31. 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 for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of 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. The Panel's temporal jurisdiction runs from 23 April 2005.⁵
32. 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.
33. The procedure before the Panel consists of two stages: first, the examination of the admissibility of the complaint; and, second, if the complaint is declared admissible, the

⁵ UNMIK Regulation No. 2006/12, Section 2.

examination of the merits of the complaint.⁶ Admissibility is determined by a formal decision, containing the reasoning for the decision. In some cases the Panel has first taken a partial decision on admissibility and then determined the remaining admissibility issues by a final decision, or considered them in conjunction with the merits. Decisions are placed on the Panel's website after the parties to the proceedings have been notified. If the Panel declares the entire complaint, or part of it, admissible, it then commences its consideration of the merits of the complaint.

34. If the complaint proceeds to an examination of the merits, the Panel will 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.⁷ Once an opinion has been provided to the parties, it is also published on the Panel's website.⁸ From there, the SRSG retains exclusive authority to decide whether to act on the findings of the Panel.⁹ The decisions of the SRSG shall be published promptly in a manner that ensures broad dissemination and accessibility.¹⁰

4. Media, NGO and Legal Literature Related to HRAP

35. In 2013, there was significant media coverage of the Panel's opinions on the complaints related to missing and murdered persons (MMP), starting from the Panel's touchstone MMP opinion in the case *S.C.* from December 2012¹¹. Both the Serbian and Albanian local press published stories concerning the Panel's MMP opinions, as the fate of missing and murdered persons continues to be an area of concern throughout the region. Some examples include: on 7 March 2013, the Serbian newspaper *Vesti* published a story about the Panel's opinion in its case *S.C.*, and well as the community's reaction to the Panel's opinion;¹² *Vesti* published articles about two of the Panel's MMP opinions, the cases *Tomanović*¹³ and *Adjančić*;¹⁴ information about the Panel's MMP opinions were published by the Serbian press agencies and circulated by the Serbian news websites *Beta* and *Tanjug*;¹⁵ a columnist in the Serbian newspaper *Politika* published a column highlighting how the Serbian government- when it held the Presidency of the UN General Assembly from September 2012 to September 2013- missed an opportunity to publicise the failure of UNMIK to compensate the victims' families for violations found in the Panel's MMP opinions;¹⁶ and, on 19 March 2013, *Koha Ditore* published a story about the Panel's opinion in the MMP case *B.A.*¹⁷

⁶ 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, §§ 48-60.

⁷ UNMIK Regulation No. 2006/12, Section 17.1.

⁸ *Ibid.*, Section 17.2.

⁹ *Ibid.*, Section 17.3.

¹⁰ *Ibid.*, Section 17.4

¹¹ For a detailed discussion of *S.C.*, see the Panel's 2012 Annual Report, §§ 68-70, 85-87.

¹² "UNMIK Turned a Blind Eye While the KLA was Killing", *Vesti*, 7 March 2013.

¹³ *Vesti*, 18 June 2013.

¹⁴ *Vesti online*, 23 September 2013, available at <http://www.vesti-online.com/Vesti/Hronika/346095/Trag-nestao-u-Alba>

¹⁵ *Beta*, 12 March 2013 and *Tanjug*, 18 June 2013.

¹⁶ *Politika*, 16 October 2013 available at <http://www.politika.rs/rubrike/Pogledi-sa-strane/Trn-u-ok-u-Pogledi-sa-...2>

¹⁷ "UNMIK Failed to Find the Killers of a Citizen", *Koha Ditore*, 19 March 2013.

36. In September 2013, Amnesty International released a comprehensive report entitled *Kosovo's UNMIK Legacy: The Failure to Deliver Justice and Reparations to the Relatives of the Abducted*, which documented the facts in approximately twenty of the Panel's MMP opinions.¹⁸ The report also explained the reasoning of the Panel in finding that UNMIK had committed human rights violations against the complainants in those cases and concurred with the Panel's findings: "Amnesty International considers that between June 1999 and December 2008 UNMIK international police and prosecutors, who were charged with the investigation of crimes under international law, failed to initiate prompt, effective, independent, impartial and thorough investigations into many, or perhaps even the majority of reports of enforced disappearances and abductions." The report also highlighted UNMIK's arguments explaining why it has not paid reparations to the complainants whose human rights had been violated, in contravention of the Panel's recommendations to UNMIK. "Amnesty International considers this response... to constitute an extraordinary attempt by UNMIK to deny its liability for violations of the very human rights standards that it was created to uphold and obliged to respect." UNMIK's responses to the Panel's recommendations will be addressed in more detail below (see §§ 97-104).
37. The renowned international scholar Manfred Nowak contributed an article about the Panel's *S.C.* opinion that was published in the September 2013 European Human Rights Law Review.¹⁹ In concluding, Professor Nowak stated that "the present opinion of the HRAP constitutes a landmark decision by an international expert body in the difficult process of holding international organisations, including the United Nations, accountable for human rights violations... In the present case, it would be highly recommendable for the SRSG to comply with the respective recommendations of publicly acknowledging UNMIK's failure to conduct effective investigations, of making an apology to the complainant and her family, and of urging EULEX and the competent domestic authorities to intensify the respective criminal investigations with the aim of identifying the perpetrators and bringing them to justice. This would be an important step in fighting the widespread impunity in Kosovo and enabling victims to hold international organisations accountable for human rights violations."
38. The French "Centre de recherches et d'études sur les droits fondamentaux" (CREDOF) of the Université Paris Ouest Nanterre La Défense, in its online *Revue des droits de l'homme*, also published two articles by M. Beulay on the Panel's opinions, concerning the cases of *B.A.*²⁰ and *Jočić*²¹. The French language website *Le Courrier des Balkans* also published a story on the Panel's MMP opinion in the case *S.C.*²², as did the weblog *TerraNullius*²³. On

¹⁸ *Kosovo's UNMIK Legacy: The Failure to Deliver Justice and Reparations to the Relatives of the Abducted*, Amnesty International, 2013, available at <http://www.amnesty.org/en/library/info/EUR70/009/2013/en>

¹⁹ M. Nowak, *European Human Rights Law Review* 2013, 3, 275-283.

²⁰ M. Beulay, "Human Rights Advisory Panel (Nations Unies et Art. 2 CEDH) : La décision B.A. c. MINUK, illustration du sérieux d'une solution initialement cosmétique", *Lettre "Actualités Droits-Libertés" du CREDOF*, 24 April 2013, available at: <http://revdh.org/2013/04/24/human-rights-advisory-panel-minuk-serieux-cosmetique/>

²¹ M. Beulay, "Human Rights Advisory Panel (Nations Unies et Art. 3 CEDH) : Un approfondissement inédit de l'obligation des Nations Unies en matière d'enquête", *Lettre "Actualités Droits-Libertés" du CREDOF*, 27 September 2013, available at: <http://revdh.org/2013/09/27/human-rights-advisory-panel-obligation-nations-unies-enquete/>

²² "Disparus du Kosovo : la faillite de la MINUK et du protectorat international", *Le Courrier Des Balkans*, 21 March 2013, available at: <http://balkans.courriers.info/article22062.html>

a more general level, the article by Professor P. Klein (Université libre de Bruxelles) on “Le Panel consultatif des droits de l’homme (*Human Rights Advisory Panel*) de la MINUK: une étape dans le processus de responsabilisation des Nations Unies ?”²⁴ should also be recalled.

5. Panel’s Website

39. The Panel’s website²⁵ was upgraded further in 2013 to enable better user interface and easier access to the decisions and opinions of the Panel. The website, which is updated on a monthly basis, lists cases by the complainant’s name to enable access to the Panel’s decisions and opinions for a particular case. In addition, the Panel also lists its decisions and opinions by case number and date of adoption, in English, Albanian and Serbian, so that interested persons can follow the evolution of the jurisprudence of the Panel. The website also displays the SRSG’s comments on the Panel’s recommendations, enabling a review of an HRAP case through its every stage. Further additions are being made to the website to improve user accessibility.

6. Caseload of the Panel

6.1. Statistics

40. During the reporting period, no new complaints were received, as 31 March 2010 was the cut-off date for the submission of new complaints. Between 2006 and 2010, the Panel received a total of 527 complaints.

41. During the reporting period, the Panel adopted 56 opinions on the merits (concerning 79 complaints), found a further 4 complaints admissible or admissible in part, declared 6 complaints inadmissible and rejected 2 requests for revision of former decisions or opinions.

42. At the end of 2013, there were 3 cases pending before the Panel at the admissibility stage, and 182 cases awaiting an opinion on the merits²⁶. The Panel closed 85 cases in 2013²⁷.

²³ M. Moratti, “The Human Rights Advisory Panel holds the UN in Kosovo responsible for failing to investigate forced disappearances – too little, too late?”, *TerraNullius*, 18 March 2013, available at: <http://terra0nullius.wordpress.com/2013/03/11/the-human-rights-advisory-panel-holds-the-un-in-kosovo-responsible-for-failing-to-investigate-forced-disappearances-too-little-too-late/>

²⁴ P. Klein, “Le Panel consultatif des droits de l’homme (*Human Rights Advisory Panel*) de la MINUK: une étape dans le processus de responsabilisation des Nations Unies ?”, *Perspectives du droit international au 21ème siècle: Liber Amicorum Christian Dominicé*, Martinus Nijhoff, Leiden/Boston, pp. 225-255.

²⁵ <http://www.unmikonline.org/hrap/Eng/Pages/default.aspx>

²⁶ In cases for which there is a partial opinion on the merits, the case is still awaiting a final opinion on the merits. Also, in 2012, the Panel re-opened 2 cases that had formerly been declared inadmissible, *Balaj and Others* and *N.M. and Others*.

²⁷ For detailed statistics, see Annex C.

6.2. Selected Opinions and Decisions of the Panel by Subject Matter

43. Below are a select number of decisions and opinions issued in 2013, listed according to the subject matter and which are highlighted for further discussion in section 8 of this report:

Right to Life – Right to an Effective Investigation

- *B.A.*²⁸, 92/09 (opinion of 1 February 2013)
- *Snežana Zdravković*, 46/08 (opinion of 25 February 2013)
- *C.S.*, 45/09 (opinion of 25 April 2013)
- *Marija Filipović*, 92/09 (opinion of 25 April 2013)
- *S.P. and V.Đ.*, 06/09 & 55/09 (opinion of 6 June 2013)
- *Vesna Antić*, 100/09 (opinion of 12 September 2013)
- *Z.I.*, 145/09 (opinion of 12 September 2013)
- *Milivoje Todorovski*, 81/09 (opinion of 31 October 2013)
- *P.S.*, 48/09 (opinion of 31 October 2013)
- *Đ.L.*, 88/09 (opinion of 21 November 2013)
- *Olivera Vitošević and Arsenije Vitošević*, 90/09 & 103/09 (opinion of 27 November 2013)
- *Ljubica Buljević*, 146/09 (opinion of 13 December 2013)
- *R.A.*, 41/09 (opinion of 13 December 2013)
- *Nenad Stojković*, 87/09 (opinion of 14 December 2013)

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

- *Svetlana Jočić*, 34/09 (opinion of 23 April 2013)
- *Ruhan Ruhani*, 85/09 (opinion of 5 June 2013)

Right to Peaceful Enjoyment of Possessions

- *Milorad Rajović*, 308/09 (decision of 31 January 2013)
- *Milorad Rajović*, 308/09 (opinion of 6 June 2013)

Right to Peaceful Enjoyment of Possessions – Right to a Decision within a Reasonable Time – Prohibition of Torture, Inhuman or Degrading Treatment – Prohibition of Discrimination – Right to Social Security and an Adequate Standard of Living

- *Tomë Krasniqi*, 08/10 (decision of 6 June 2013)

Right to Peaceful Enjoyment of Possessions – Right to an Effective Remedy – Right to a Decision within a Reasonable Time

- *Marija Lalić*, 31/08 (opinion of 14 March 2013)
- *Jugobanka A.D. Under Receivership I*, 57/10 (decision of 6 June 2013)

Right to a Decision within a Reasonable Time

- *Vladimir Manohin*, 27/09 (opinion of 2 August 2013)

²⁸ Complainants requested anonymity.

7. Trends and Issues of Note

44. In 2013, the Panel's number one priority was processing the cases regarding the alleged ineffective investigations into cases of MMPs. In practice, this meant that the Panel issued opinions for 72 MMP cases in total. In 71 out of the 72 cases, the Panel found that UNMIK had committed violations of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR. Specifically, the Panel found UNMIK had violated the procedural obligation of Article 2 of the European Convention on Human Rights due to the ineffectiveness of its investigation into the abductions, disappearances and/or killings of the complainants' relatives.
45. As discussed at length below, the Panel developed its jurisprudence and further refined its explanation as to why investigations did not meet the standards of investigations as required by international human rights law. One highlight was the Panel's discussion regarding the right to truth, which started in its case *D.L.* Noting the jurisprudence of the European Court of Human Rights, the Panel stated, "The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred. The United Nations also recognises the importance of the right to truth. In the words of the United Nations Secretary-General, 'the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons ... it also implies the right to know the fate and whereabouts of the victim.'" See HRAP, *D.L.*, no. 88/09, opinion of 21 November 2013, § 88.
46. In addition, in 2013, the Panel found for the first time that UNMIK had committed violations of Article 3 of the ECHR specifically with respect to the rights of relatives of victims to be free from inhumane or degrading treatment. The Panel first elaborated its reasoning related to breaches of Article 3 in its case *Jočić*; subsequently, the Panel elaborated its jurisprudence concerning Article 3.
47. Regarding Article 3 of the ECHR, the Panel observed that that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. "Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died." Next, the Panel discussed the jurisprudence of the UN Human Rights Committee and the ECtHR regarding Article 3 of the ECHR, noting that the "European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any 'meaningful' action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information

as to the fate of their missing relatives despite personal or written inquiries with official bodies.”

48. The Panel recognised that “the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction. However, in contrast, in the case under the Panel’s consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant’s mental distress caused by the commission of the crime itself.”
49. Notwithstanding in *Jočić*, the Panel found that UNMIK had contributed to the complainant’s distress and mental suffering through the way that UNMIK had dealt with the case of her son’s disappearance, as UNMIK had not communicated with her concerning the status of its investigation, and had thus left her unable to find out what had happened to her son. The Panel noted that the “complainant has never been contacted by either the UNMIK Police or prosecutors, that her statement was never recorded and that she was never informed of the progress of the investigation. The Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in its entirety. As was shown with respect to Article 2, the file as presented provides no details of any communication between UNMIK investigative authorities and the complainant from the time of the filing of the initial report of the disappearance.”
50. The Panel concluded that “the complainant suffered severe distress and for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with her complaint and as a result of her inability to find out what happened to her son. In this respect, it is obvious that, in any situation, the pain of a mother who has to live in uncertainty about the fate of her disappeared son must be unbearable. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the complainant’s distress and mental suffering in violation of Article 3 of the ECHR.” See HRAP, *Jočić*, no. 34/09, opinion of 23 April 2013, §§ 21-26, 85, 102-104, 122-125.
51. In addition to the case *Jočić*, in 2013 the Panel decided that UNMIK had violated Article 3 of the ECHR in 52 other cases. In all of these cases, the Panel made recommendations to UNMIK on how to address these violations. Among other forms of reparation, the Panel recommended that UNMIK formally publically apologise to the complainants and their families for the distress and suffering that was caused by UNMIK’s inaction and dereliction of duty. For more on the Panel’s recommendations to UNMIK, see §§ 91-96, below.
52. In 2013, the Panel was encouraged to note that the responses of the SRSG to the Panel’s recommendations in opinions where it determined that UNMIK had committed human rights violations were forthcoming at a much faster pace than in previous years²⁹.
53. In addition to the issues related to Articles 2 and 3 of the ECHR mentioned above, the Panel continued to process cases concerning the following legal issues:

²⁹ The Panel expressed concern in the 2012 HRAP Annual Report concerning the SRSG’s lack of publishing his public reactions to the Panel’s recommendations. For further information, see 2012 HRAP Annual Report §§ 88-91.

- Allegations of a violation of the right to a fair trial and the right to a decision by a court in a reasonable time (Article 6 § 1 of the ECHR);
- Allegations of a violation of the right to an effective remedy (Article 13 of the ECHR);
- Allegations of a violation of the right to be free from discrimination (Article 14 of the ECHR);
- Allegations of a violation of the right to peaceful enjoyment of possessions and the right to protection of property (Article 1 of Protocol No. 1 to the ECHR); and
- Allegations of a violation of the right to social security and to an adequate standard of living (Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights).

54. Additionally, the Panel has been continuing to work on key cases for which it expects to issue opinions in 2014. For example, the Panel expects to issue an opinion regarding the case *Balaj*, involving allegations of a violation of the right to life (Article 2 of the ECHR). In *Balaj*, the complainants allege that UNMIK Police used excessive force during a crowd control operation in Kosovo on 17 February 2007, resulting in the deaths of two victims and the serious bodily injury of two other victims. Also, the Panel expects to issue an opinion regarding the case *N.M. and Others*, concerning allegations of violations of the right to life, (Article 2 of the ECHR) prohibition of inhuman or degrading treatment (Article 3 of the ECHR) and the right to respect for private and family life (Article 8 of the ECHR), among others. In *N.M. and Others*, the complainants, who are 143 members of the Roma, Ashkali and Egyptian communities in Kosovo, 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.

8. Jurisprudence of the Panel

55. In 2013, the Panel continued to make significant progress in addressing its caseload. In closing 85 cases that were on its docket, the Panel issued decisions and opinions that gave a degree of finality to complainants while simultaneously expanding the Panel's jurisprudence on a number of novel procedural and substantive matters. Some important decisions and opinions issued by the Panel in 2013 are described in more detail below.

8.1. Admissibility Issues

8.1.1. Jurisdiction *Ratione Temporis*

56. Where the complainant alleges a violation of the substantive limb of Article 2 of the ECHR, arising from the death of a family member that occurred prior to the commencement of the Panel's jurisdiction on 23 April 2005, this complaint is considered as referring to an instantaneous event which does not give rise to a continuing situation. As such, it falls outside of the Panel jurisdiction *ratione temporis*. See HRAP, *Zdravković*, case no. 46/08, opinion of 25 February 2013, § 77.

8.1.2. Jurisdiction *Ratione Personae*

57. In the case *Jugobanka Under Receivership I* the complainant alleged that the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters (Special Chamber), by issuing a moratorium on any litigation in respect of Trepça/Trepča mines, has delayed the Special Chamber proceedings and denied it a decision within a reasonable time, in violation of Article 6 § 1 of the ECHR. The Panel noted that during this time, the complainant has been under the administration of the Deposit Insurance Agency of Serbia, whose complaints the Panel found to be outside of its jurisdiction *ratione personae* in its earlier case, *Deposit Insurance Agency*. Noting that the Deposit Insurance Agency of Serbia exercised close control over the complainant, Jugobanka A.D, and noting the jurisprudence of the ECtHR in comparable cases involving Serbian banks where Serbia had exercised close control over the Serbian banks, the Panel decided the complaint of Jugobanka A.D. to be outside its jurisdiction *ratione personae*. See HRAP, *Jugobanka Under Receivership I*, case no. 57/10, decision of 6 June 2013, §§ 22-25.
58. In the case *Krasniqi*, where the complainant alleged that he had not been able to receive his pension benefits from the Yugoslav pension fund after UNMIK's arrival in 1999, the SRSG argued that the complaint was outside the Panel's jurisdiction *ratione personae*, as the fund was administered by authorities in Belgrade. The Panel disagreed, noting that "the case law of the European Court states that the effective exercise of the right protected by Article 1 of Protocol No. 1 'does not depend merely on the State's duty not to interfere, but may require the adoption of positive measures of protection particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions' ". The Panel also noted "that, in the circumstances of the present case, and pursuant to the United Nations Security Council Resolution 1244 (1999), UNMIK was mandated, 'pending a final settlement', with the interim administration of Kosovo without prejudice to 'the sovereignty and territorial integrity of the Federal Republic of Yugoslavia'. In this regard, the Panel refers to the case law of the European Court that, in the presence of a factual situation which reduces the scope of jurisdiction of the authority concerned - in this case UNMIK *vis-à-vis* the Belgrade authorities – the state in question must endeavour, with all the legal and diplomatic means available to it *vis-à-vis* foreign states and international organisations, to continue to guarantee the enjoyments of the rights and freedoms guaranteed by the Convention. For these reasons, the Panel considers that the complaint under Article 1 of Protocol No. 1 to the ECHR falls within the jurisdiction *ratione personae* of the Panel pursuant to Section 1.2 of UNMIK Regulation No. 2006/12 and dismisses the SRSG's objection in this regard." See HRAP, *Krasniqi*, case no. 08/10, decision of 6 June 2013, §§ 29-31.

8.1.3. Jurisdiction *Ratione Materiae*

59. In the same case, *Krasniqi*, the SRSG argued that the complainant's pension benefits were not "definable" possessions according to Article 1 of Protocol No. 1, and as such the matter was outside the Panel's jurisdiction *ratione materiae*. The Panel disagreed, noting that "the [European] Court has also held that where there is in force legislation providing for the

payment as a right of a pension, that legislation has to be regarded as ‘generating proprietary interest’ falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements and that the reduction or discontinuance of a pension may therefore constitute an interference with the peaceful enjoyment of possessions. The Panel therefore considers that this part of the complaint falls within the jurisdiction of the Panel *ratione materiae* and rejects the SRSG’s objection in this regard.” See HRAP *Krasniqi*, case no. 08/10, cited in § 58 above, at §§ 27-28.

8.1.4. Organisational Relationship Between UNMIK and OSCE Mission in Kosovo

60. Where the OSCE Mission in Kosovo (OMiK) occupied the complainant’s property between 1 March 2000 and 1 November 2007, the complainant may raise an issue concerning his rights under Article 1 of Protocol No. 1 of the ECHR attributable to UNMIK, despite the fact that OMiK represented a distinct pillar of the international presence in Kosovo. OMiK’s authority to take over the complainant’s premises during this time period, can only have derived from OMiK’s inclusion with the UNMIK administrative framework and UN Security Council Resolution 1244 (1999). See HRAP, *Rajović*, case no. 308/09, decision of 31 January 2013, §§ 18-21.

8.2. Issues on the Merits

8.2.1. Right to Life – Right to an Effective Investigation – Article 2 of the ECHR

Lack of Investigative File

61. In the case *B.A.*, where UNMIK was not able to provide to the Panel any files related to the investigation into the disappearance and death of the victim, the Panel decided to proceed on the merits of the complaint only on the basis of documents made available by the complainant and the scarce information provided by UNMIK, and to draw inferences from this situation. The Panel noted that “Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint.” The Panel referred to the case-law of the European Court of Human Rights that “inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure to submit information in their hands without a satisfactory explanation”. See HRAP, *B.A.*, case no. 52/09, opinion of 1 February 2013, §§ 46-49.
62. In *B.A.*, the Panel also noted that that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of investigations to their handing over to other investigative bodies, is crucial to the continuation of such investigations. Failure to maintain the investigative files could thus raise *per se* issues under Article 2 of the ECHR. See HRAP, *B.A.*, case no. 52/09, cited in § 61 above, at § 48.
63. In the case *C.S.*, where UNMIK was not able to provide to the Panel any files related to the investigation into the disappearance and death of the victim, the SRSG argued that the forensic investigation of the case should be separated from the criminal and judicial

element. “With respect to the forensic component, the SRSG maintains that a full investigation was conducted by UNMIK Police, which led to the location and identification of the mortal remains of [the victims]. As such, there was no violation of this component of Article 2 of the ECHR, which can be attributed to UNMIK.” The Panel disagreed, noting that although locating and identifying the mortal remains is in itself an important achievement, “the procedural obligation under Article 2 did not come to an end with the discovery of mortal remains, especially as the circumstances showed signs of a suspicious death and a violent death in [relation to the victims]. Nonetheless, there is no evidence that any action was undertaken with respect to clarifying the circumstances surrounding the disappearance and death of [the victims]. As a result, UNMIK’s obligation to investigate this case did not cease with the location and identification of the mortal remains of [the victims]. The Panel concludes, therefore, that the SRSG’s observation that UNMIK did not violate Article 2 of the ECHR due to it having established the location of these bodies is not in itself sufficient to discharge its obligation in this regard.” See HRAP, *C.S.* case no. 45/09, opinion of 25 April 2013, §§ 47, 80.

Relationship between UNMIK’s Investigation and Other Investigative Authorities

64. In the case *Antić*, where UNMIK was not able to provide to the Panel any files related to the investigation into the disappearance and death of the victim except for one e-mail, the SRSG argued that “the investigation into the death of [the victim] may have been part of a wider war crimes investigation conducted by UNMIK Police and UNMIK International Prosecutors, which might explain the lack of any investigative file. Based on the information obtained by UNMIK, it cannot be asserted whether the investigation aimed at identifying and bringing to justice those who are responsible for the death of [the victim] was successful and that there is the possibility that additional and conclusive information exists. The Panel did not accept this argument, stating “such an argument must be supported by something more than a single e-mail, in which the complainant is only named as a witness to another incident in the area, which took place almost nine months before [the victim’s] killing. As no such additional proof was offered by UNMIK, the Panel dismisses this argument.” See HRAP, *Antić* case no. 100/09, opinion of 12 September 2013, §§ 42, 75.

No Investigation by UNMIK-High Crime Rate

65. In the case *Ž.I.*, where the SRSG accepted that UNMIK Police apparently did not conduct an investigation into the murder of the victim, the SRSG stated that another circumstance to take into account in assessing the effectiveness of the investigation was the fact that the killing occurred when the crime rate in Kosovo was at its highest, in June 1999, in the aftermath of the NATO bombing. According to the SRSG, during the years 1999 and 2000 UNMIK received hundreds of reports on disappearances and killings of Kosovo Serbs, which were particularly challenging to investigate due to the limited resources as well as to a lack of leads; the mass departure of Kosovo Serbs to Serbia proper had made locating witnesses particularly challenging. In response, the Panel noted, “that for this argument to be valid, it should have been supported by statistical data. As no such data was provided by the SRSG, the Panel dismisses this argument.” The Panel found that “the investigation into the killing of [the victim] was not adequate and did not comply with the requirements of

promptness, expedition and effectiveness as required by Article 2.” See HRAP *Ž.I.*, no. 145/09, opinion of 12 September 2013, §§ 52, 91-92.

Lack of Investigative File – Burden of Proof

66. In the case *B.A.*, where UNMIK was not able to provide to the Panel any files related to the investigation into the disappearance and death of the victim, the Panel considered that this raised issues of the burden of proof. Specifically, the Panel followed both the jurisprudence of the ECtHR and the United Nations Human Rights Committee (HRC) and decided that “since the documentation was under the exclusive control of UNMIK authorities, at least until the handover to EULEX, the principle that ‘strong inferences’ may be drawn from lack of documentation is applicable.” See HRAP, *B.A.*, case no. 52/09, cited in § 61 above, at §§ 50-53.
67. The Panel also noted that “according to the 2000 Annual Report of UNMIK Police, at least from mid-September 1999 the whole system of criminal investigation in Prishtinë/Priština region was under the full control of UNMIK. Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for investigation; and *third*, that the investigative files could be traced and retrieved, should a need arise at any later stage.”
68. Since UNMIK had not provided any investigative files, the Panel concluded “that one of the following situations occurred: no investigation was carried out; UNMIK deliberately opted not to present the file to the Panel, despite its obligation to cooperate with the Panel and to provide it with the necessary assistance, including the release of documents relevant to the complaints under Section 15 of UNMIK Regulation No. 2006/12; the file was not properly handed over to EULEX; or UNMIK failed to retrieve the file from the current custodian. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the investigative file for the Panel’s review. However, the Panel considers that whichever of these potential explanations is applicable, it indicates a failure, which is directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.” See HRAP, *B.A.*, case no. 52/09, cited in § 61 above, at §§ 71-75.

Incomplete Investigative File – Burden of Proof

69. In the case *S.P. and V.D.*, where UNMIK was only able to provide to the Panel an incomplete investigative file related to the investigation into the disappearance and death of the victim, the SRSG argued that the missing information could have been due to a lack of information passed on to the appropriate offices or from a mere lack of investigation”. For this reason, the SRSG stated that, “UNMIK is not in a position to comment appropriately on the merits of the matter”. In response, the Panel noted “the limited content of the investigative files, in particular in the light of the SRSG’s argument that, for this reason, it is not possible to ascertain whether there was a failure by UNMIK to conduct an effective investigation into the case of [the victim], raises issues of the burden of proof. In this regard, the Panel refers to the approach of the European Court on Human Rights as well as

of the United Nations Human Rights Committee (HRC) on the matter. The general rule is that it is for the party who asserts a proposition of fact to prove it, but that this is not a rigid rule.” See HRAP, *S.P. and V.D.*, case nos. 06/09 & 55/09, opinion of 6 June 2013, §§ 64, 70.

“Disproportionate Burden”

70. In the case *Filipović*, where UNMIK was only able to provide to the Panel an incomplete investigative file related to the investigation into the disappearance and death of the victim, the SRSG argued that the investigation complied with the standards of an effective investigation as envisaged by Article 2 of the ECHR, especially when considering the circumstances prevailing in Kosovo in the post-conflict situation. The SRSG noted that the ECtHR stated- in a similar case from the Bosnian conflict- that due consideration shall be given to the difficulties inherent to post-conflict situations, and the problems limiting the ability of investigating authorities in investigating such cases. In the view of the SRSG, in the aftermath of the Kosovo conflict, UNMIK was faced with a very similar situation to the one in Bosnia. The Panel noted that “in response to the SRSG’s objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts that due consideration shall be given to the difficulties inherent to post-conflict situations, and the problems limiting the ability of investigating authorities in investigating such cases.” See HRAP, *Filipović*, case no. 92/09, opinion of 25 April 2013, §§ 45-46, 74.

Unclear Date of Abduction

71. In the case *P.S.*, where UNMIK was only able to provide to the Panel an incomplete investigative file related to the investigation into the disappearance and death of the victim, the SRSG argued that the efforts by UNMIK Police to follow the leads provided by the witnesses were unsuccessful, due to a lack of conclusive information as to the fate of the victim, including, specifically, a lack of clarity surrounding the date of her disappearance. The Panel disagreed, noting that “in the circumstances of this case, the date of disappearance is not such a crucial fact that, if it was wrong by a few days, could seriously undermine the investigation. The purpose of this investigation was to discover the truth about the events leading to the disappearance of [the victim], to locate her or her mortal remains and to identify the potential perpetrators.” See HRAP, *P.S.* case no. 48/09, opinion of 31 October 2013, §§ 60, 88-89.

No DNA Samples Collected

72. In the case *Buljević*, UNMIK was only able to provide to the Panel an incomplete investigative file related to the investigation into the disappearance of the victim, and did not collect DNA samples from the victim’s family. The Panel questioned the effectiveness of UNMIK’s actions. “In this respect, the Panel notes that the collection of the DNA samples is of itself an essential action that secures the necessary material for any future

comparative examination and possible identification of located mortal remains. However, in this case, first, such samples have still not been collected, fourteen years after [the victim] was allegedly abducted, and, second, there is no explanation offered by the authorities as to why this has not been done. It is widely accepted that the only way to have a certain identification of mortal remains after such a long period of time would be through comparison of samples of DNA material. Thus, the collection of sufficient samples from the next-of-kin of a missing person becomes imperative, and without this the chances to establish the identity of mortal remains, if found, are very slim. Therefore, since the ongoing failure to collect such samples seriously undermines the possibility of identifying [the victim's] mortal remains (in case they have been or will be found), the Panel considers that the first part of the procedural obligation under Article 2 of the ECHR is not satisfied." See HRAP *Buljević*, case no. 146/09, opinion of 13 December 2013, §§ 94-95.

Witnesses Moved Outside of the Jurisdiction of Kosovo and Were Not Interviewed

73. In the case *Todorovski*, where UNMIK was only able to provide to the Panel an incomplete investigative file related to the investigation into the disappearance and death of the victim, the Panel discussed the particular aspects that made the investigative file incomplete. Specifically, the Panel stated that, "In the same report, the investigator also states that the two other witnesses were not interviewed, as by the time UNMIK Police tried to reach them both had moved to Serbia proper and could no longer be traced. First, the Panel considers that this attempt to contact witnesses, four years after the abduction, was obviously belated. Second, the file should have at least a brief explanation as to how UNMIK Police attempted to actually locate them. Even though the investigators were still able to trace and talk to one of the witnesses, his statement was never officially recorded. In the Panel's view, this lack of prompt reaction from UNMIK Police may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation."
74. The Panel also noted, "Assessing this investigation against the need to take reasonable investigative steps and to follow the obvious lines of enquiry to secure the evidence, the Panel takes into account that a properly maintained investigative file should have included records of all investigative actions and particularly of the interviews with the complainant, suspects and all potential witnesses to the abduction. In all cases, such interviews should take place as soon as possible and should be recorded and retained in the case file. The failure to identify, locate and formally interview the persons who were mentioned as being involved in the abduction again undermines the effectiveness of the investigation." See HRAP, *Todorovski* no. 81/09, opinion of 31 October 2013, §§ 109-111.
75. Similarly, in the *Buljević* case, UNMIK Police had not interviewed the victim's family and a potential eye-witness, all of whom had apparently left Kosovo shortly after the victim's disappearance to become displaced persons in Serbia proper. The Panel stated that "[it] appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the

humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses as well as to consider the special vulnerability of displaced persons in post-conflict situations. Thus, in the Panel's view, it was for UNMIK to reach out to the victim's family, and not for them to come back to Kosovo, from where they left for security reasons, to try to find out what had happened to their relative or to the investigation." See HRAP, *Buljević*, no. 146/09, cited in § 72 above, at §§ 83, 100.

Incomplete Investigative File – DNA Collection Only One Aspect of Effective Investigation

76. In *Todorovski*, where the investigation into the disappearance of the victim had included DNA collection, the Panel specified that DNA collection is only one aspect of an effective investigation. The Panel noted "that the collection of the DNA samples is of itself an essential action that secures the necessary material for any future comparative examination and possible identification of located mortal remains. However, as in this case no such identification has yet occurred, the Panel will turn to the investigation carried out by UNMIK Police with the aim of identifying perpetrators and bringing them to justice, that is the second element of the procedural obligation under Article 2 of the ECHR." See HRAP, *Todorovski*, case no. 81/09, opinion of 31 October 2013, § 107.
77. Similarly, in the case *Đ.L.*, UNMIK was only able to provide to the Panel with an incomplete investigative file related to the investigation into the disappearance and death of the victim, but did provide information concerning its forensic work in the case. The SRSG explained, "families of missing persons have a right to know about that person's fate", which, according to the SRSG includes their right "to an accurate identification of all bodies found so far as to make sure whether or not their relative is among the dead, as well as, if so, information on where the body was found and how the person was killed etc." The SRSG continued that "[t]he family also has a right to bury the body of the dead relative, if and when recovered." According to the SRSG, "the main activities required for addressing [these] aspects" is forensic work, including the "searches of alleged graves, exhumations, autopsies, the comparison of ante and post mortem data, DNA tests, information to families, and the return of bodies and belongings found to the families." However, the Panel disagreed. "The Panel welcomes a number of the SRSG's statements in relation to the process of finding and identification of the mortal remains of the missing persons, and the relatives' right in this respect. However, the Panel does not fully agree with the assertion that the main part of work in this respect depends on forensic action, as it is presented by the SRSG. In this particular case, as almost no investigation was done, there

appears to be little room for forensics work.” See HRAP, *D.L.* case no. 88/09, opinion of 21 November 2013, §§ 53, 109.

78. In the same case, *D.L.*, explaining why further investigations were not carried out, the SRSG had argued that “[i]nvestigative action from UNMIK appears to have remained pending ... due to a lack of information or leads that would enable further meaningful investigation and prioritization against other cases.” The Panel disagreed, noting “almost any investigation at its initial stage lacks a significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. The file, as made available to the Panel, does not show any such activity. Thus, it appears that UNMIK Police simply waited for further information to appear by itself. In this situation, in Panel’s view, it is such a passivity by UNMIK Police ... that may have led to the loss of potential evidence.” See HRAP *D.L.* case no. 88/09, cited in § 77 above, at § 123.

Incomplete/Disorganised Investigative File

79. In the case *Buljević*, UNMIK was only able to provide to the Panel an incomplete investigative file related to the investigation into the disappearance and death of the victim. The SRSG expressed dissatisfaction regarding the way information was presented in the investigative file, as pieces of information were found in different documents, either submitted by the complainant or provided by EULEX. The file was apparently produced at different dates and often without clear cross-references, which could have possibly allowed a complete view of the incident. The Panel stated that while it fully shared the SRSG’s concern regarding the disorganisation of the file, “the Panel, however, finds that in view of the circumstances of the present case, such a lack of structure and analysis of the scarce information available in the investigative file was not a cause of the failure of UNMIK Police to investigate this matter, but quite clearly the result of this failure.” See HRAP, *Buljević*, case no. 146/09, cited in § 72 above, at §§ 83, 100.

Lack of Coordination of Investigation

80. In the case *Stojković*, UNMIK was able to provide to the Panel a complete investigative file related to the investigation into the disappearance and death of the victim; however, the investigation itself was ineffective due to the lack of the coordination of the investigation by the UNMIK prosecutors and UNMIK Police. The Panel noted, “the prolonged failure to link the separate investigations to the missing person and to the unidentified body shows the obligation [to conduct an effective investigation] is not fulfilled simply by the establishment of an adequate framework, but only when it becomes a properly coordinated system that is able to carry out an adequate and effective investigation in accordance with Article 2 of the ECHR.” See HRAP, *Stojković*, case no. 87/09, opinion of 14 December 2013, § 164.
81. In the same case, *Stojković*, the Panel noted that key prosecutorial decisions seemed to have been made by an UNMIK Police Deputy Commissioner. “In the Panel’s view, a proper prosecutorial review of the investigative file may have resulted in additional actions

recommended, so the case would not have stayed inactive for months.” See HRAP, *Stojković*, case no. 87/09, cited in § 80 above, at §§ 55, 160.

Effectiveness of the Investigation by UNMIK Regarding a Missing/Murdered Person – Complete Investigative File

82. In the case *Zdravković*, where UNMIK commenced the investigation into the victim’s abduction promptly and undertook all crucial investigative steps in the immediate aftermath of the incident, the Panel concluded that there has been no violation of Article 2, procedural limb, of the ECHR. Specifically, the Panel went through the investigatory record and determined that “UNMIK Police had taken all reasonable steps to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.” See HRAP, *Zdravković*, case no. 46/08, cited in § 56 above, at §§ 115, 119.
83. Similarly, in the same case *Zdravković*, there was a delay in the identification of the mortal remains, from the exhumation of the body in 2003 until the final identification in 2007, which the SRSG acknowledged. However, according to the SRSG, this delay was due to the difficulties appertaining to excavating mass graves where the number of the dead persons is large, requiring the careful separation and reassembly of mortal remains and items of identification, as well as to “the need to complete full autopsies for each individual to be identified”. The SRSG noted that, “UNMIK police did in fact take all the necessary, urgent investigative measures at the earliest stages of the incident and pursued with diligence and independence all enquiries while operating in exceptional circumstances as those present in the north of Kosovo at the time.” The Panel accepted this argument, stating, “the Panel is aware that the processes of exhuming and identifying mortal remains in the context of post-conflict Kosovo was particularly time-consuming, as a considerable number of cases concerning missing persons were simultaneously being handled by UNMIK during this period. For such procedures, and in particular for the DNA-based identification, adopted in Kosovo as of 2003, UNMIK had to rely on the technical cooperation of external institutions, primarily the ICMP. For this reason, the Panel does not consider such delay to be unreasonable. The Panel also notes that, given the circumstances of the case, the delay in the identification cannot be considered to have further prejudiced the investigation and its ability to bring perpetrators to justice.” See HRAP, *Zdravković*, case no. 46/08, cited in § 56 above, at §§ 88-90, 122.

Public Scrutiny

84. In the case *Zdravković*, there was a dispute between the complainant and UNMIK over whether the complainant was given sufficient information regarding the progress of UNMIK Police’s investigation of the victim’s abduction. After noting that UNMIK police had met on several occasions with the complainant’s family to gather information in order to follow-up on the investigation, the Panel recalled the ECtHR had held that “this aspect of the procedural obligation does not require applicants to have access to police files, or copies of all documents during an ongoing enquiry, or for them to be consulted or informed at every step.” The Panel noted that “the complainant’s view that the scope of the information received was limited or not entirely satisfactory. However, it appears to the

Panel that the limited information provided to the complainant and her family was due to the lack of concrete results, substantial progress or change in status of the investigation. For these reasons, the Panel deems that in the present case the applicant cannot be considered to have been excluded from the investigation process to such a degree as would infringe the minimum standard of Article 2.” See HRAP, *Zdravković*, case no. 46/08, cited in § 56 above, at § 125.

Reasonableness of the Delay in the Investigation

85. In the case *R.A.* which was not related to the conflict, there was a dispute between the complainant and UNMIK over whether the UNMIK Police investigation into the victim’s suspicious death had been adequate. In particular, the complainant claimed that there was an unreasonable delay in carrying out toxicological analysis after the autopsy and that the investigative authorities did not follow all lines of enquiry concerning his nephew’s death. The SRSG argued that the fact that the toxicological analysis of the victim’s death was not undertaken after his death by suspicious means did not constitute an excessive delay because Kosovo lacked an operational toxicology laboratory at that time. The Panel agreed with the SRSG noting, “[h]aving assessed the activity carried out by the investigators in the immediate aftermath of the incident, the impossibility of conducting the toxicology analysis in Kosovo until at least March 2007, as well as the limited part of the investigation which falls under its temporal jurisdiction, the Panel considers the above mentioned delays not to be excessive in the circumstances of the case.” See HRAP, *R.A.*, case no. 41/09, opinion of 13 December 2013, §§ 60, 65-66.

8.2.2. Prohibition of Torture, Inhuman or Degrading Treatment – Article 3 of the ECHR

Lack of Investigative File – Lack of Contact with Complainant

86. In the case *Jočić*, which concerned the complainant’s allegation that UNMIK did not perform an effective investigation into her son’s disappearance and killing and also did not inform her of the status of its investigation, the Panel first addressed the question of whether the attitude and reactions of UNMIK authorities to the disappearance of a missing person and to the complainant’s quest for information with regard to the fate of her son and the criminal investigation, would amount to a violation of the obligation under Article 3 of the ECHR, having regard to the realities in Kosovo at the relevant time. The Panel noted the close proximity of the family ties between the complainant and her son; the actions the complainant had undertaken to try to get information about him; the lack of contact that UNMIK police and prosecutors had made with the complainant; and the unexplained delay of nearly eight years between the location of the victim’s mortal remains and when the complainant was informed of the positive identification of those remains.
87. The Panel continued, noting that “drawing inferences from UNMIK’s failure to submit the investigative documents or to provide another plausible explanation for the complete absence of contact with the complainant, or information about the criminal investigation into the disappearance and killing of [the victim], the Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave

uncertainty about the fate of the complainant's son and the status of the investigation...the Panel concludes that the complainant suffered severe distress and for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with her complaint and as a result of her inability to find out what happened to her son... the Panel concludes that, by its behaviour, UNMIK contributed to the complainant's distress and mental suffering in violation of Article 3 of the ECHR." See HRAP, *Jočić*, case no. 34/09, opinion of 23 April 2013 §§ 117-125.

8.2.3. Right to a Judicial Decision Within a Reasonable Time – Article 6 § 1 of the ECHR

Delayed Service of Judgment

88. In the case *Manohin*, the complainant alleged that the Municipal Court of Prishtinë/Priština's delay in the service of its judgment violated his right to a judicial decision within a reasonable time. The SRSG argued that UNMIK was not at fault, as the complainant did not inform the court that he had stopped being represented by his former lawyer. The SRSG stated "given the silence of both the complainant and his authorized legal representative, it is not clear how and by whom else the Municipal Court of Prishtinë/Priština should have been given the correct contact details of the complainant, to be able to serve him with the abovementioned summons and ruling." The Panel agreed, noting, "in such a circumstance, where the complainant knew that he was losing his legal representation, it was at least partially his responsibility to inform the Municipal Court of Prishtinë/Priština as to who, if anyone, would be representing him in the future and to what address it should send its subsequent summons and rulings. As such, the Panel considers that the complainant's failure to provide the Municipal Court of Prishtinë/Priština with that pertinent information, in fact substantially contributed to the delay in his receiving the judgment. Therefore, the Panel found that there has been no violation of Article 6 § 1 of the ECHR." See HRAP *Manohin*, case no. 27/09, opinion of 2 August 2013, §§ 22, 25-26.

8.2.4. Right to Protection of Property – Right of Access to a Court – Article 1 of Protocol No. 1 to the ECHR and Article 6 of the ECHR – Right to an Effective Remedy – Article 13 of the ECHR

No action by UNMIK on Paternity Suit

89. In the *Lalić* case, the complainant argued that the judicial proceedings to determine legal paternity over her child had remained pending since 1998, including the period from June 1999, when UNMIK was exercising responsibility over the administration of justice in Kosovo. The SRSG argued that UNMIK did not have responsibilities with respect to the judicial system in Kosovo before it deployed. The Panel noted that "although it is certainly true that UNMIK was not yet present in Kosovo in 1998 – that is when a retrial was ordered - it is also true that it became responsible for the interim administration of Kosovo, including the administration of justice, as of 10 June 1999. The Panel also considers that, in compliance with its executive functions and human rights obligations, it is legitimate to expect that UNMIK's efforts towards the re-establishment of the rule of law and the organisation of the judiciary in Kosovo, should also entail policies to ensure the realisation of the fair trial guarantees, including the right of access to a court, for those whose judicial

claims were pending at the time of UNMIK's arrival." Because UNMIK did not provide any explanation as to why the complainant's claim was not proceeded with by the courts, nor did it give an explanation as to whether any policy was developed by UNMIK for a transitional system to ensure that cases already pending in the Kosovo courts before its arrival were dealt with, the Panel found that the complainant's right of access to a court as envisaged by Article 6 of the ECHR was violated. See HRAP, *Lalić*, opinion of 14 March 2013, case no. 31/08, §§ 45, 47-49.

8.2.5. Right to the Peaceful Enjoyment of Possessions – Article 1 of Protocol No. 1 to the ECHR

Organisational Relationship Between UNMIK and OSCE Mission in Kosovo

90. In the case *Rajović*, where the OSCE Mission in Kosovo (OMiK) occupied the complainant's property between 1 March 2000 and 1 November 2007, the Panel found that once UNMIK had been notified of the issue of ownership of the property, it was under a duty to review and, if necessary, rectify the nature of the occupation by OMiK, because of OMiK's inclusion with the UNMIK administrative framework, pursuant to UN Security Council Resolution 1244 (1999). Therefore, UNMIK's failure to undertake any remedial action such as entering into a contract for rent regarding the claim constituted an unlawful interference by UNMIK that amounted to a violation of Article 1 of Protocol No. 1 of the ECHR in respect to the unlawful occupation of the premises in Pejë/Peć by OMiK. See HRAP, *Rajović*, case no. 308/09, opinion of 6 June 2013, §§ 39-40.

9. Concluding Comments and Recommendations of the Panel

91. In 2013, the Panel adopted 53 opinions on the merits where it found violations of human rights for which UNMIK was responsible. In each of these cases, the Panel considered some form of reparation to be necessary. This year, as in past years, the Panel found it somewhat problematic to determine what recommendations it should make in a situation where UNMIK is no longer able to have a direct impact on decisions being made in Kosovo. As noted previously, UNMIK can no longer amend legislation as necessary (or in any case, even if it amended the relevant legislation, it could no longer ensure enforcement), nor can it direct the Kosovo authorities to remedy other deficiencies identified by the Panel. This situation required the Panel to be cognisant of such limitations while making recommendations that would have a beneficial impact on the human rights situation of the affected complainants.
92. In 71 out of the 72 of the MMP cases (mentioned in § 44 above), the Panel found that UNMIK had committed a violation of Article 2 of the ECHR, specifically by failing to carry out an adequate and effective investigation into the disappearance or abduction and/or killing of the complainants' close relatives. In these cases, the Panel took a wider view of reparations and recommended that UNMIK obtains assurances from EULEX that the investigations would be continued in compliance with the requirements of Article 2, that the circumstances surrounding the disappearance and killing of the victims be established and perpetrators brought to justice; the complainant and/or other next-of-kin should be informed of such proceedings and relevant documents disclosed to them, as necessary. In

addition, the Panel recommended that UNMIK publicly acknowledges, within a reasonable time, responsibility with respect to its failure to adequately investigate the disappearance and killing of the victims and make a public apology to the complainants and their families in this regard. The Panel also recommended that UNMIK pays adequate compensation to the complainant for the moral damage suffered due to UNMIK's failure to conduct an effective investigation.

93. Additionally, the Panel recommended that UNMIK takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict. Finally, the Panel recommended that UNMIK takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring. Thus, for the first time, the Panel made recommendations that urged UNMIK to seek systemic responses to the human rights violations. The Panel hopes for an appropriate reaction from UNMIK to these recommendations.
94. In 53 cases, the Panel also found that UNMIK had committed violation of Article 3 of the ECHR (mentioned in §§ 46-51 above). Specifically, the Panel found that UNMIK's failure to communicate with the complainants and their families regarding the status of its investigations into the disappearance, abduction and/or killing of their relatives caused the complainants and their families to suffer severe distress in contravention of the right to be free from degrading treatment. Therefore, in addition to recommending all of the reparations regarding the violations of Article 2 of the ECHR, the Panel recommended that UNMIK also pay adequate compensation to the complainants for moral damage in relation to its violations of Article 3 of the ECHR.
95. In cases of violations of other provisions, such as violations of the right to property guaranteed by Article 1 of Protocol 1 of the ECHR, the Panel recommended compensation for pecuniary and non-pecuniary for the violation (see HRAP, *Rajović*, no. 308/09, cited at § 90 above). In yet other cases, the Panel recognized that it would have recommended certain concrete actions for UNMIK to undertake to remedy the situation, except for the fact that UNMIK was no longer capable of exercising its mandate under United Nations Security Council Resolution No. 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 the opinion with the relevant actors to prompt further action. The Panel used this formula in *Lalić*, recommending that UNMIK "must endeavour, with all the diplomatic means available to it *vis-à-vis* the Kosovo authorities, to obtain assurances that the case filed by the complainant will be duly processed" See HRAP, *Lalić*, no. 31/08, cited in § 89 above.

96. In every complaint to date in which the Panel has found a violation, the Panel has recommended that UNMIK takes immediate and effective measures to implement its recommendations and to inform the complainant and the Panel about further developments in the case.

10. UNMIK's Reactions to the Panel's Recommendations

97. The Panel notes that Section 17.3 of UNMIK Regulation No. 2006/12 provides that the SRSG shall have exclusive authority and discretion to decide whether to act on the findings of the Panel, while Section 17.4 requires that the decisions of the SRSG “shall be published promptly in English, Albanian and Serbian in a manner that ensure broad dissemination and accessibility.” Since 2010, 88 responses to the 124 opinions adopted by the Panel have been placed on the Panel’s website. The Panel is encouraged to note that UNMIK has made an effort to publish more responses to the Panel’s opinions than in previous years. In the 2011 and 2012 Annual Reports, the Panel had voiced its concern about UNMIK’s lack of public reaction to the Panel’s recommendations, and in this Annual Report, the Panel notes that UNMIK has evidently made addressing this backlog a priority. Nevertheless, the nature of UNMIK’s responses, combined with UNMIK’s failure to achieve any practical reparation or benefit for the complainants, might suggest a lack of engagement from the SRSG regarding the Panel and its process.
98. As for the substance of the SRSG’s responses, in his response to one of the Panel’s MMP opinions, *Pavić*, no. 98/09 opinion of 26 April 2013, the SRSG stated that he will continue to urge EULEX and other competent authorities to take all steps to ensure that the criminal investigations into the disappearance and killing of the complainant’s family member is continued and that the perpetrators are brought to justice. The Panel understands that the SRSG has sent a letter to EULEX regarding this case, and in a majority of the other MMP cases, urging them to continue the investigations. On a positive note, the Panel is pleased to report that in 2013, EULEX created a Task Force, led by an international prosecutor, who is looking into these unfinished MMP investigations and is charged with making recommendations to EULEX prosecutors and police about how to proceed. However, as of time of this report, the Panel is not aware of any tangible results that have been achieved by the EULEX Task Force.
99. In relation to the Panel’s recommendation that the SRSG make a public apology to the complainants and their families for the ineffective investigation, the SRSG has thus far sent a form letter to many of the complainants, in which he states “I deeply regret that there was a lack of an effective investigation into the abduction and death of your [loved one] which has caused you additional distress and mental suffering.” The Panel considers that, first, if the SRSG’s letter included significant statements to take remedial action to try to ameliorate the suffering of the complainant, then this could constitute a meaningful apology. Second, in any event, in the Panel’s view, this does not constitute a public apology.³⁰

³⁰ In the Serbian newspaper *Vesti*, in a story concerning public reaction to the Panel’s opinion in the case *S.C.* (mentioned in § 35 above), the Coordinator of the Association of Families of Kidnapped and Missing in Kosovo and Metohija stated, “All members of the families of the kidnapped and missing persons are convinced that UNMIK has

100. In relation to the Panel's recommendation that the SRSG take appropriate steps toward the realisation of a full and comprehensive reparation programme, including restitution, compensation, rehabilitation and satisfaction, the SRSG informs complainants that "I wish to recall that the acts in question relate to activities carried out by the institutions established under the interim administration of Kosovo. As such, had UNMIK continued to have control over these institutions today, UNMIK would have been in a position to refer the Panel's recommendation to those institutions for appropriate action." This formula is how UNMIK has chosen to inform the complainants that there will be no compensation paid by UNMIK for its human rights violations. Amnesty International, in its Report (see § 36 above), considers the SRSG's approach unacceptable. "It was unquestionably UNMIK police, rather than the Kosovo authorities, that were invested with the responsibility for the investigation of cases of missing persons. The obligation to ensure reparation for the failure to do this must therefore fall on UNMIK itself."³¹ The Report states that when Amnesty International queried UNMIK on this point, urging UNMIK to pay reparations, the SRSG said, "...it is an irrefutable fact that UNMIK's capacity to pay immaterial damages has ceased to exist and [it] now falls upon local Kosovo authorities having assumed exclusive control over public administration in Kosovo". To this reply, Amnesty International wrote, "Amnesty International considers this response...to constitute an extraordinary attempt by UNMIK to deny its liability for violations of the very human rights standards that it was created to uphold and respect."
101. The Panel agrees with the Amnesty International Report. It is not clear why UNMIK's capacity to pay immaterial damages has any connection to the local authorities having assumed exclusive control over public administration in Kosovo. As the human rights violations were committed by UN personnel, it should be the UN's responsibility to pay compensation for these breaches. Even if it were true - as the SRSG has informed the Panel in previous correspondence³² - that current United Nations General Assembly (UNGA) instructions on compensation do not allow payment for human rights violations, it would still be possible for the SRSG to address this situation with the UNGA in an attempt to remedy this deficiency. In fact, in previous responses to the Panel's opinions, the SRSG had stated "UNMIK will continue to draw the attention of the United National General Assembly to a need for a review of the current compensation rules, which exclude payment of compensation for non-pecuniary damage." To date, the Panel is not aware of any effort made by the SRSG to draw the attention of the UNGA to the need for a review of the compensation rules. In more recent responses to the complainants, the SRSG does not even mention the UNGA, stating only that, "I am prepared to discuss the possibility of setting up a mechanism to deal with such matters with the relevant authorities at the appropriate juncture." The Panel is unaware of any such discussions.
102. In relation to the Panel's recommendation that the SRSG make guarantees concerning non-repetition, the SRSG states only that, "UNMIK no longer performs police functions,

done absolutely nothing to find our loved ones. If UNMIK apologizes, as humans we would appreciate it, but our tragedy cannot be wiped out by an apology. The only apology is to investigate crimes against our loved ones."

³¹ *Kosovo's UNMIK Legacy: The Failure to Deliver Justice and Reparations to the Relatives of the Abducted*, Amnesty International, 2013, available at <http://www.amnesty.org/en/library/info/EUR70/009/2013/en>.

³² For further discussion of this point, please see the 2012 HRAP Annual Report § 90-91.

including police investigations.” Again, the Panel disagrees: to simply assert the position that UNMIK has no responsibility regarding non-repetition, or regarding the compensation of the complainants, undercuts the credibility of the whole exercise.

103. Many of the complainants have addressed the Panel Secretariat after receiving their opinions recommending that the UN compensate them for violating their human rights. These complainants, encouraged that they might receive some validation for their suffering, have asked the Panel’s Secretariat what they should do now, in order to actually receive this compensation. At this time, the Secretariat can only inform them that they should request further information from the SRSG.
104. The Panel notes that, despite the lengthy process of issuing admissibility decisions, opinions, and recommendations, UNMIK remains basically unaccountable for its human rights violations. As the Parliamentary Assembly of the Council of Europe noted in a recent Report, “(a)s of November 2013, UNMIK has not provided compensation to the victims of human rights violations as recommended by the Panel...”³³ This result has stemmed more from the SRSG’s attitude in responding to the Panel’s recommendations, because the process as it was originally designed, gave the Panel the opportunity to provide some real oversight over UNMIK regarding human rights. The Panel, which was established to offer some oversight and accountability to UNMIK, is not able to succeed in this function without UNMIK buying into the scheme and responding in kind. The Panel urges the SRSG to engage more proactively with the Panel’s recommendations *vis-à-vis* the complainants in the coming year, in order to make the process worthwhile for the complainants.

³³ See PACE, Council of Europe, “Accountability of international organisations for human rights violations”, Doc 13370 ,17 December 2013, § 59.

11. 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: HRAP Statistical Table
- Annex D: HRAP Decisions and Opinions Issued in 2013
- Annex E: HRAP Complaints Received by Year
- Annex F: HRAP Closed Cases (Inadmissible, or Opinion on the Merits) by Year
- Annex G: Abbreviations and Acronyms

Annex A

UNITED NATIONS
United Nations Interim
Administration Mission in
Kosovo



UNMIK

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

UNMIK/REG/2006/12
23 March 2006

REGULATION NO. 2006/12

ON THE ESTABLISHMENT OF THE HUMAN RIGHTS ADVISORY PANEL

The Special Representative of the Secretary-General,

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

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

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

Hereby promulgates the following Regulation:

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

Section 1

Establishment of the Human Rights Advisory Panel

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

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

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

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

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

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

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

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

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

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

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

Section 2

Temporal and Territorial Jurisdiction

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

Section 3

Admissibility Criteria

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

3.2 The Advisory Panel shall not deal with any complaint that

(a) Is anonymous; or

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

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

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

Section 4 Seat and Composition

4.1 The Advisory Panel shall have its seat in Pristina.

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

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

Section 5 Appointment of the Members

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

5.2 The members shall be appointed for a term of two years³⁴. 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

³⁴ The term in office for Panel Members was reduced to one year, renewable, by the UNMIK Regulation No. 2007/3 of 12 January 2007.

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

Section 7
Immunity and Inviolability

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

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

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

Section 8
Financial and Human Resources

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

Section 9
Secretariat

A full-time secretariat shall service the Advisory Panel.

CHAPTER 3: Procedure before the Human Rights Advisory Panel

Section 10
Submission of complaints and *Ex Officio* Representatives

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

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

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

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

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

Section 11 Written Submissions

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

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

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

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

Section 12 Confidentiality of Communications

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

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

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

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

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

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

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

Section 14 Oral hearings

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

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

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

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

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

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

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

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

Section 17 Findings and Recommendations of the Advisory Panel

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

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

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

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

Section 18
Rules of Procedure

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

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

CHAPTER 4: Final Provisions

Section 19
Implementation

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

Section 20
Applicable Law

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

Section 21
Entry into force

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

Søren Jessen-Petersen
Special Representative of the Secretary-General

Annex B**UNITED NATIONS**

United Nations Interim
Administration Mission in
Kosovo



UNMIK

NATIONS UNIES

Mission d'Administration
Intérimaire des Nations
Unies au
Kosovo

UNMIK/DIR/2009/1
17 October 2009

ADMINISTRATIVE DIRECTION NO. 2009/1

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

The Special Representative of the Secretary-General,

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

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

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

Hereby promulgates the following Administrative Direction:

Section 1
Public Hearings

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

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

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

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

Section 2 Issues of Admissibility

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

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

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

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

Section 3 Appointment and Resignation of Panel Members

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

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

Section 4
Publications of the Advisory Panel

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

Section 5
Cut-off Date for Submission of Complaints

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

Section 6
Entry into Force

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

Lamberto Zannier
Special Representative of the Secretary-General

Annex C

HRAP Caseload, Communications & Determinations (as of 31 December 2013)

Caseload	2006	2007	2008	2009	2010	2011	2012	2013	Total	
Received	3	12	69	353	90	n/a	n/a	n/a	527	
Closed	0	0	18	11	35	98	95	85	342	
Pending	3	15	66	408	463	365	270	185	185	
Determinations by Type	2006	2007	2008	2009	2010	2011	2012	2013	Total	
Total	0	0	32	26	84	213	270	90	715	
Admissibility Decisions	0	0	28	22	56	164	238	10	518	
Partial Admissibility Decisions	0	0	2	0	1	0	0	-	3	
Strike off the List	0	0	0	3	5	2	6	-	16	
Opinions on the Merits	0	0	1	0	22	46	23	78	170	
Partial Opinions on the Merits	0	0	0	1	0	0	0	-	1	
Requests for Revision and Re-opening	0	0	1	0	0	1	3	2	7	
Determinations by Finding	2006	2007	2008	2009	2010	2011	2012	2013		
Decisions	Admissible	0	0	11	2	16	63	112	2	206
	Partially Admissible	0	0	2	9	25	51	60	2	149³⁵
	Inadmissible	0	0	17	8	10	50	66	6	157
Opinions: Violation	0	0	1	0	21	45	21	76	164	
Opinions: No Violation	0	0	0	1	1	1	2	3	8³⁶	
Requests for Revision:	Refused	0	0	1	0	0	1	1	2	5
	Granted	0	0	0	0	0	0	2	-	2

³⁵ Three of them are “partial admissibility” decisions.

³⁶ One of them is a partial opinion on the merits.

Annex D**HRAP Decisions and Opinions Issued in 2013****Decisions Admissible in Full: 2 (2)**

1. RAJOVIĆ, Milorad, 308/09 - decision of 31 January 2013
2. MIRIĆ, Svetislav, 342/09 - decision of 15 February 2013

Decisions Admissible in Part: 2 (2)

1. MILADINOVIĆ, Nebojša, 331/09 - decision of 14 March 2013
2. KRASNIQI, Tomë, 08/10 - decision of 6 June 2013

Decision on request to re-open Proceedings: 1 (1)

1. TOMANOVIĆ, Verica, 191/09 - decision of 7 June 2013

Decisions Inadmissible: 6 (6)

1. MILOSAVLJEVIĆ, Gavriilo, 164/09 - decision of 31 January 2013
2. GRKOVIĆ, Miroslav, 5/10 - decision of 15 February 2013
3. MALOKU, Shehide, 02/10 - decision of 14 March 2013
4. SIMONOVIĆ, Snežana, 257/09 - decision of 14 March 2013
5. JUGOBANKA (I), 57/10 - decision of 6 June 2013
6. JUGOBANKA (II), 58/10 - decision of 6 June 2013

Opinions: Violation 53 (76)

1. KOSTIĆ, Petra, 194/09 - opinion of 31 January 2013
2. B.A., 52/09 - opinion of 1 February 2013
3. T.P., 88/10 - opinion of 15 February 2013
4. J.D., 44/09 - opinion of 14 March 2013
5. BOGIĆEVIĆ, Mirjana, 112/09 - opinion of 14 March 2013
6. RISTANOVIĆ, Slavica, 123/09 - opinion of 14 March 2013
7. NEDELJKOVIĆ, Slavica, 268/09 - opinion of 14 March 2013
8. VUKIĆEVIĆ, Jagoda, 272/09 - opinion of 14 March 2013
9. LALIĆ, Marija, 31/08 - opinion 14 of March 2013
10. JOČIĆ, Svetlana, 34/09 - opinion of 23 April 2013
11. TOMANOVIĆ, Dušan, KOKOVIĆ -TOMANOVIĆ, Jelena, and TOMANOVIĆ, Verica, 248/09, 250/08, 251/09 - opinion of 25 April 2013
12. C.S., 45/09 - opinion of 25 April 2013
13. ĐUKANOVIĆ, Rada and ĐUKANOVIĆ, Radmila, 67/09 & 140/09 - opinion of 25 April 2013
14. FILIPOVIĆ, Marija, 92/09 - opinion of 25 April 2013

15. MARINKOVIĆ, Svetlana, 94/09 - opinion of 25 April 2013
16. PAVIĆ, Jordanka, 98/09 - opinion of 25 April 2013
17. D.P., 04/09 - opinion of 6 June 2013
18. S.P. and V.Đ., 06/09 & 55/09 - opinion 6 June 2013
19. NEDELJKOVIĆ, Nadica, 46/09 - opinion of 6 June 2013
20. RUHANI, Ruhan, 85/09 - opinion of 6 June 2013
21. MILENKOVIĆ, Snežana and MILENKOVIĆ, Momčilo, 168/09, 169/09 and 312/09 - opinion of 6 June 2013
22. RAJOVIĆ, Milorad, 308/09 - opinion of 6 June 2013
23. X. 326/09, 327/09, 328/09, 329/09, 330/09 - opinion of 6 June 2013
24. JOKIĆ, Velibor, 323/09 - opinion of 6 June 2013
25. MAJSTOROVIĆ, Dragica and STEVANOVIĆ, Slavica, 42/09 & 128/09 - opinion of 31 July 2013
26. FIVE COMPLAINANTS, 43/09, 54/09, 114/09, 173/09 and 242/09 - opinion of 31 July 2013
27. PAVIĆ, Stana, 47/09 - opinion of 31 July 2013
28. SPASIĆ, Slobodanka, ĐOKIĆ, Jagodinka and NEDELJKOVIĆ, Cveta, 221/09, 273/09 and 336/09 - opinion of 31 July 2013
29. STANIŠIĆ, Milevka, 49/09 - opinion of 31 July 2013
30. POPOVIĆ, Stana, 56/09 - opinion of 31 July 2013
31. CAMOVIĆ, Slavica, 23/09 - opinion of 31 July 2013
32. ČUPIĆ, Olivera, 278/09 - opinion of 31 July 2013
33. G.R., 12/09 - opinion of 21 August 2013
34. M.M. and V.M., 35/09 - opinion of 21 August 2013
35. NIĆETIĆ, Verica, 69/09 - opinion of 21 August 2013
36. ŽIVKOVIĆ, Dijana, 71/09 - opinion of 21 August 2013
37. OGAREVIĆ, Živorad, 77/09 - opinion of 21 August 2013
38. MILENKOVIĆ, Ljiljana, STOJANOVIĆ, Marica, MILENKOVIĆ, Dalibor and MILENKOVIĆ, Ljubiša, 97/09, 332/09, 335/09 and 345/09 - opinion of 21 August 2013
39. STEVIĆ, Tomislav, 50/09 - opinion of 11 September 2013
40. D.I., 57/09 - opinion of 11 September 2013
41. LJUŠIĆ, Zlatibor and Zoran, 70/09 and 108/09 - opinion of 12 September 2013
42. MILADINOVIĆ, Zufe, 86/09 - opinion of 11 September 2013
43. ANTIĆ, Vesna, 100/09 - opinion of 12 September 2013
44. Ž.I., 145/09 - opinion of 12 September 2013
45. P.S., 48/09 - opinion of 31 October 2013
46. TODOROVSKI, Milivoje, 81/09 - opinion of 31 October 2013
47. GOGIĆ, Milisav, 135/09 - opinion of 31 October 2013
48. Đ.L., 88/09 - opinion of 21 November 2013
49. ĐURICA, Katica, 79/09 - opinion of 25 November 2013

- 50. VITOŠEVIĆ, Olivera and VITOŠEVIĆ, Arsenije, 90/09 and 103/09 - opinion of 27 November 2013
- 51. STOJKOVIĆ, Nenad, 87/09 - opinion of 14 December 2013
- 52. MINIĆ, Miljana, 101/09 and 107/09 - opinion of 13 December 2013
- 53. BULJEVIĆ, Ljubica, 146/09 - opinion of 13 December 2013

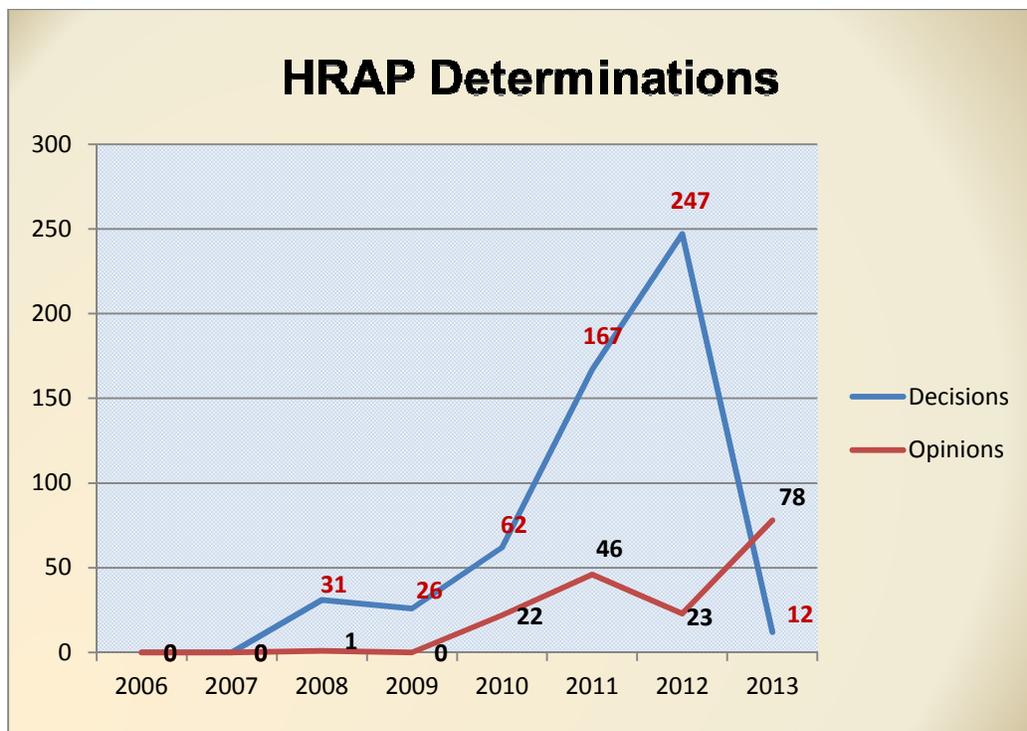
Opinions: No Violation 3(3)

- 1. ZDRAVKOVIĆ, Snežana, 46/08 - opinion of 25 February 2013
- 2. MANOHIN, Vladimir, 27/09 - opinion of 2 August 2013
- 3. R.A.,41/09 - opinion of 13 December 2013

Annex E



Annex F



Annex G**ABBREVIATIONS AND ACRONYMS**

DOJ - Department of Justice
DPPO - District Public Prosecutor's Office
ECHR - European Convention on Human Rights
ECtHR - European Court of Human Rights
EU - European Union
EULEX - European Union Rule of Law Mission in Kosovo
HRAP - Human Rights Advisory Panel
HRC - United Nations Human Rights Committee
IACtHR - Inter-American Court of Human Rights
ICMP- International Commission on Missing Persons
ICRC - International Committee of the Red Cross
KFOR - International Security Force (commonly known as Kosovo Force)
KLA - Kosovo Liberation Army
MMP - Missing/Murdered Person
OMIK- Organisation for Security and Cooperation in Europe Mission in Kosovo
OMPF - Office on Missing Persons and Forensics
OSCE - Organization for Security and Cooperation in Europe
SRSG - Special Representative of the Secretary-General
UN - United Nations
UNDP - United Nations Development Programme
UNGA- United Nations General Assembly
UNHCR - United Nations High Commissioner for Refugees
UNMIK - United Nations Interim Administration Mission in Kosovo