



## **European Union**

### **Human Rights Review Panel Kosovo**

### **Annual Report**

**1 January to 31 December 2013**

**Human Rights Review Panel - Secretariat**

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## Table of Contents

Foreword.....	5
1. Introduction .....	7
2. Regulatory Framework.....	8
2.1. Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO .....	8
2.2. Accountability Concept EULEX Kosovo – Human Rights Review Panel, General Secretariat of the Council, Brussels of 29 October 2009.....	8
2.3. Applicable International Human Rights Instruments.....	8
3. The Panel and the Secretariat.....	10
3.1. General.....	10
3.2. Panel Members – Biographical Information .....	10
3.3. The Secretariat – Biographical Information .....	12
4. Caseload and subject matter of complaints .....	14
4.1. Caseload and statistics.....	14
4.2. Trends .....	14
4.3. Subject-matter of complaints .....	15
5. Jurisprudence.....	17
5.1. Merits.....	17
5.1.1. <i>W against EULEX</i> – the disclosure of the witness’s personal data .....	17
5.1.2. The <i>Vidovdan</i> cases – the obligation of EULEX to protect human rights.....	18
5.2. Admissibility .....	20
5.2.1. The Panel’s competence to review proceedings before Kosovo Courts .....	20
5.2.2. The Panel’s competence to review lawfulness and length of pre-trial detention.....	20
5.2.3. Monitoring, mentoring and advising and the executive mandate of EULEX.....	20
5.2.4. Victim status.....	21
5.2.5. Corruption and human rights.....	22
5.2.6. Re-examination of a complaint .....	22
5.2.7. Article 3 of ECHR .....	22
6. Activities of the Panel .....	24
6.1. Public Outreach Campaign 2013.....	24
6.2. Induction training for EULEX staff.....	25
6.3. Website .....	25
7. Operational/Administrative/Personnel Matters .....	26
7.1. Inadmissibility of complaints .....	26
7.2. Budget.....	26
8. International Commentary on Human Rights Accountability for International Organizations ....	27
8.1. “European exceptionalism?” .....	27

8.2.	“Establishing Accountability for Inter-Governmental Organisations and States” .....	27
8.3.	“Accountability of international organisations for human rights violations” .....	31
8.4.	Amnesty International report: “Kosovo - UNMIK’S Legacy” .....	33
8.5.	Inadmissibility decision of the European Court of Human Rights in <i>Azemi v. Serbia</i> .....	35
9.	The future of EULEX and human rights challenges ahead .....	36
10.	Concluding remarks .....	38
ANNEX 1	Staff table.....	39
ANNEX 2	Schedule of outreach campaign and other activities .....	40
ANNEX 3	Statistics 2010 - 2013 .....	43
ANNEX 4	Decisions of the HRRP 2010-2013.....	44

## Foreword

This is the fourth annual report of the Human Rights Review Panel (hereafter “the Panel”). As in previous years, since 2010 the Panel continued throughout the reporting period with its review of complaints of human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.

In 2013, the Panel conducted five sessions and witnessed a considerable increase in its case-load with the receipt of 27 new complaints. During the reporting period, the Panel reviewed 21 complaints. In seven of them it found that human rights violations had occurred.

Violations by EULEX related to both actions and omissions by the Mission which resulted in breaches of the human rights of the complainants. Two Panel’s decisions related to the so-called *Vidovdan* celebrations that take place in Kosovo annually in June. The Panel found that EULEX had failed to provide sufficient resources and to conduct adequate planning in order to maintain public peace and order as stipulated by its mandate. This resulted in the violation of the rights of a number of participants in those events.

Further violations were noted by the Panel in a case involving the sharing of personal data of a potential witness in a war crimes case by EULEX prosecutors with certain prosecuting authorities. Violations included the right to respect for private and family life, freedom of thought, conscience and religion, freedom of assembly and association as well as the right to an effective remedy.

The Panel submitted recommendations to the Head of Mission of EULEX Kosovo to address those violations as well as those found in other cases. In one case, the Panel issued a follow-up decision, taking the view that the Head of Mission had not implemented all of the Panel’s recommendations. Those decisions are discussed in further detail in the present report. The Panel declared 14 other complaints inadmissible.

The Panel and its Secretariat continued its outreach campaign with a view to disseminating information about its mandate with the main effort being concentrated on the Kosovo judiciary, human rights and legal aid NGOs, civil society representatives as well as on church and religious bodies in both Kosovo and Serbia. The Panel and the Secretariat also engaged in media interviews and debates and attended various human rights related seminars, conferences and round table discussions.

The Panel also continued with its periodic meetings with the Head of Mission, the Deputy Head of Mission and other senior officials in EULEX. In this regard, in June 2013 the Panel made a presentation on its mandate, procedures and jurisprudence to EULEX prosecutors and legal officers.

The Secretariat also conducted outreach campaign activities in Serbia where it held meetings with the Project “Further Support to the Implementation of the Strategies for IDPs, Refugees and Returnees - Legal Aid” funded by the Delegation of the European Union in Serbia.

A regular electronic newsletter, which was launched in 2012, has proven to be a most successful medium in the provision of information on the Panel and in raising public awareness of its mandate and operations. Yet, despite its extensive outreach activities, there continues to be a significant lack of awareness of the Panel’s existence and mandate in the mission area.

The Panel believes that this lacuna can only be addressed by a TV/Radio campaign which it hopes to launch eventually in 2014, allied to an intensification of its regular on-going outreach campaign

activities. This, however, will require allocation of appropriate financial resources by EULEX for that purpose.

There were some changes to the composition of the Panel during the reporting period, with the resignation of Panel member Ms Verginia Micheva-Ruseva who was replaced by the former substitute member, Ms Katja Dominik. Ms Elka Filcheva-Ermenkova was appointed as the new substitute member of the Panel.

I would like to take this opportunity to express my gratitude to all the Panel Members and Secretariat staff, past and present, for their outstanding professional contributions to the work of the Panel during the reporting period.

Equally, I would like to express my gratitude to the Head of Mission EULEX and his staff as well as the Head of Human Rights and Legal Office, and to EULEX in general for their support and cooperation with the Panel and Secretariat throughout the year.

Finally, the Human Rights Review Panel would like to acknowledge the action by the Head of Mission in the implementation of its recommendations in its cases during the reporting period. In particular, the Panel would like to commend the Head of Mission for his follow-up remedial actions in relation to its recommendations in cases [A, B, C & D against EULEX](#), (Case nos. 2012-09/10/11/12), the “*Vidovdan cases*”.

Magda Mierzewska  
Presiding Member  
Human Rights Review Panel

## 1. Introduction

The Human Rights Review Panel, established by the European Union on 29 October, 2009 continued with its review of alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate throughout its third full year of operations in 2013. The Panel is notably the first and, so far, the only human rights accountability mechanism that deals with alleged violations of human rights by a European Union Common Security and Defence Policy mission.

Currently, together with the Human Rights Advisory Panel of the United Nations Interim Administration Mission in Kosovo (UNMIK), it serves as one of only two international panels that hold international organisations accountable for human rights violations. The extension of accountability for human rights violations from states to international organizations represents a major advance in the development of international human rights protection that garners increasing international recognition.

The report outlines the Panel's activities and achievements for the period from 1 January until 31 December 2013. Its focus lies primarily on the Panel's case load and its developing jurisprudence. Further, the Panel's efforts in regard to its outreach activities are outlined in some detail as well as the growing acknowledgment of its activities in the international context.

Throughout the reporting period, the Panel conducted five sessions and received twenty seven new complaints. The Panel reviewed thirty five cases and communicated seventeen cases to the Head of Mission. The Panel found thirteen cases to be inadmissible, five cases to be admissible and found that there were human rights violations in regard to seven complainants.

These cases mark the most significant developments in the Panel's jurisprudence, as they address crucial legal and factual questions regarding the interpretation of the executive mandate of EULEX and corresponding human rights obligations conferred upon the Mission.

The Panel submitted to the Head of Mission EULEX Kosovo detailed recommendations in order to remedy those human rights breaches. The Panel also assessed the response of EULEX Kosovo to its various case recommendations where human rights violations occurred.

It appreciates the actions taken by the Head of Mission, in particular, with regard to the "Vidovdan cases", A, B, C and D, 2012/10/11/12 respectively. The Panel also wishes to commend the Chief Prosecutor, EULEX Kosovo for the review of the said cases B, C and D in accordance with its recommendations.

At the conclusion of its fourth year in operation, the Panel is satisfied that it has made a significant contribution to the international status which EULEX now enjoys from a human rights perspective, as a Common Security and Defence Policy Mission, having subjected itself to external accountability for alleged human rights violations in the conduct of its executive mandate.

## **2. Regulatory Framework**

### **2.1. Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO**

The Council Joint Action is the source of authority and power of the EULEX Mission in Kosovo. It lays down the mandate of EULEX and, *inter alia*, specifies its responsibility to act in compliance with relevant human rights standards in Article 3 (i): “ensure that all its activities respect international standards concerning human rights and gender mainstreaming”.

### **2.2. Accountability Concept EULEX Kosovo – Human Rights Review Panel, General Secretariat of the Council, Brussels of 29 October 2009**

The establishment of an effective, transparent human rights accountability mechanism was considered to be a fundamental requirement for EULEX Kosovo as a Rule of Law Mission vested with certain limited executive functions. Such an external accountability mechanism was intended to complement the overall accountability of EULEX Kosovo as provided by the Third Part Liability Insurance Scheme and the EULEX Internal Investigation Unit which were established at the outset.

Thus, the Accountability Concept laid down the mandate of the Panel to review complaints from any person, other than EULEX Kosovo personnel, claiming to be the victim of a violation of his or her human rights by EULEX Kosovo in the conduct of the executive mandate of EULEX Kosovo.<sup>1</sup> According to the Concept, however, the Panel has no jurisdiction in respect of Kosovo courts. Moreover, the Panel have found that the fact that EULEX judges sit on the bench does not modify the character of these courts as Kosovo courts (for more details, see par. 5.2.1 below).

The Panel adopted its own Rules of Procedure on 10 June 2010, the date from which it was authorized to receive complaints.

### **2.3. Applicable International Human Rights Instruments**

Pursuant to the provisions of the Accountability Concept, the Panel may consider complaints pertaining to alleged breaches of, *inter alia*, the following human rights instruments:

- The Universal Declaration on Human Rights (1948)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950)
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965)
- The International Covenant on Civil and Political Rights (CCPR, 1966)
- The International Covenant on Economic, Social and Cultural Rights (CESCR, 1966)
- The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)
- The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT, 1984)
- The International Convention on the Rights of the Child (CRC, 1989)

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<sup>1</sup> The Accountability Concept is part of the Operational Plan of EULEX. It is therefore deemed a restricted document and thus not accessible to the public.

In practice, the complaints filed to date have been primarily based upon the European Convention on Human Rights (ECHR) and its Protocols.

### 3. The Panel and the Secretariat

#### 3.1. General

There were some changes in the composition of the Panel during the reporting period with the resignation of Panel member Ms Verginia Micheva-Ruseva who was replaced by its former substitute member, Ms Katja Dominik. She in turn was replaced by Ms Elka Filcheva-Ermenkova as the new substitute member of the Panel.

#### 3.2. Panel Members – Biographical Information

The Panel consists of four members, including a Presiding Member and a EULEX substitute member.

**Presiding Member Ms Magda Mierzewska**, a Polish citizen, passed the Polish State Examination for judicial posts in 1982. She was admitted to the Gdańsk Chamber of Legal Counsel in 1989 and received her LLM in European Union Law from the University of Leicester in 2005.

She was appointed as a case lawyer in the Secretariat of the European Commission of Human Rights, Strasbourg in 1993. She has been employed as a lawyer at the Registry of the European Court of Human Rights, Strasbourg, France since 1998. She has extensive international training experience in various substantive and procedural human rights issues.

Ms Mierzewska's numerous academic publications include: *The European Convention on Human Rights and Fundamental Freedoms: Ten Years after the Ratification*, Council of Europe Information Office Warsaw 2004; *Ten Years On: The Popularity of the Convention in Poland* (co-author), European Human Rights Law Review, Issue 4, 2004; *Ten Years On: Voluminous and Interesting Polish Case Law* (co-author), European Human Rights Law Review, Issue 5, 2004; *Standards Established in the Case Law of the European Court of Human Rights in Cases Concerning Expropriations and their Application to German Property Claims*, Polish Institute of International Affairs, 2005; *The Process of Reception of the European Convention on the Protection of Human Rights and Fundamental Freedoms in Poland and Slovakia in: The Reception of the European Convention on the Protection of Human Rights*, eds. H. Keller, A. Stone-Sweet, Oxford University Press, May, 2008; *Consistency of judicial practice as a human rights issue in the case-law of the European Court of Human Rights*, in: *Cohérence et impact de la jurisprudence de la Cour européenne des droits de l'homme*, Liber amicorum Vincent Berger, 2013. .

#### Members

##### Dr Guénael Mettraux

Dr Guénaël Mettraux practices as Defence counsel and consultant before international criminal jurisdictions (ICTY, ICC, STL and ECCC). Over the past decade, he has represented several high-ranking military and civilian leaders accused of international crimes. He has advised governments and NGOs on various issues pertaining to regulatory regimes, criminal trials, legislations and transitional justice. Dr Mettraux is currently Professor at the University of Amsterdam (The Netherlands) and guest lecturer at the University of Fribourg (Switzerland).

He has published extensively in the field of international criminal law. His scholarly works include three books: *International Crimes and the ad hoc Tribunals* (Oxford University Press, 2005), *Perspectives on the Nuremberg Trial* (Oxford University Press, 2008) and *The Law of Command Responsibility* (Oxford University Press, 2009), which was awarded the *Lieber Prize* from the

*American Society of International Law*. Dr Mettraux is a member of the Editorial Committee of the *Journal of International Criminal Justice* and the Board of Editors of the *International Criminal Law Review*.

### **Ms Katja Dominik**

Ms Katja Dominik, a German citizen, studied law and Slavic languages at the University of Goettingen, Germany from which she graduated in 1996.

Ms Dominik was awarded a post graduate scholarship and completed her studies on the legal aspects of the state collapse of the Socialist Federal Republic of the Former Yugoslavia in Zagreb, Croatia in 1998/99. Her dissertation on the subject matter was published in 2001.

From 2000 to 2002, she worked as a law clerk which included periods at the Higher Regional Court, Duesseldorf and also at an advocacy office which specialized in asylum law. In 2002 she was employed by the Federal German Ministry of Development and Economic Co-operation in Bonn where she worked in the Division for European development policy. In this capacity, she researched and drafted texts and speeches for international development aid conferences in Brussels and Bonn where she also on occasion represented the German government.

In October 2002, Ms Dominik was appointed as a Judge at the District Court, Duesseldorf where she specialized in various types of criminal law. She thereafter became deputy chairman in the District Court criminal chambers for serious capital crimes and economic crimes.

Ms Dominik was appointed as an International Judge with EULEX Kosovo in October, 2011 whereupon she was assigned to the District Court Mitrovica where she deals with high profile cases of war crimes, murder, corruption and human trafficking. The Head of Mission EULEX appointed Ms Dominik as a member of the European Union Human Rights Review Panel in January 2013.

### **Substitute Member**

#### **Ms Elka Filcheva-Ermenkova**

Ms Elka Filcheva-Ermenkova, a Bulgarian citizen, studied law at the University of Blagoevgrad, Bulgaria where she graduated in 1997. She concentrated on human rights studies during her Master's Degree and she later completed numerous courses on the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols. Upon completion of her post-graduate internship, in October 1998 she was appointed as a Junior Judge at the District Court, Blagoevgrad in an appeals panel, where under the supervision of two District Court judges she presided over cases in all subject matters: civil, criminal and administrative law. In 2001 she was appointed as a Judge at the Regional Court of Law in Blagoevgrad where she presided over civil and criminal cases. In 2003 she was appointed as President of the Regional Court in Blagoevgrad.

In 2004, she was appointed as a District Court Judge, second instance, and she worked both as a first instance and as an appellate judge both in civil and criminal matters, with the main emphasis on civil matters.

In January 2008, she was seconded to the Council of the European Union (EU), in the department for Civilian Planning and Conduct Capability (CPCC) as a Rule of Law Adviser where she worked until January 2012. In January 2012 she was appointed as an International Judge at the Appeals Panel for the appeals against decision of the Kosovo Property Claims Commission. She was appointed as the

Substitute Member of the European Union Human Rights Review Panel by the Head of Mission EULEX Kosovo on 15 January, 2013.

### **3.3. The Secretariat – Biographical Information**

The Secretariat of the Panel consists of a Senior Legal Officer, two Legal Officers, an Administrative/Language Assistant and two Interpreters/Translators.

**Mr John J. Ryan**, an Irish citizen, graduated with a Bachelor of Laws, (Hons) in Law and European Studies from the University of Limerick, Ireland, and he holds a post graduate degree as a Solicitor from the Incorporated Law Society of Ireland. He practiced as a Solicitor with Stephen MacKenzie and Co. Solicitors, Dublin, Ireland. He has served with the United Nations in Lebanon, Syria, Israel, Cambodia, Bosnia Herzegovina, Croatia, Macedonia, East Timor, Nepal, Kosovo and with the European Commission in China. Prior to taking up his current assignment, he was employed with UNMIK, inter alia, as the Administrator of Zvecan Municipality, Mitrovica Region, Head of the International Judicial Support Division, Department of Justice, Deputy Legal Adviser, Office of the Special Representative of the Secretary General, (O/SRSG), UNMIK and Executive Officer, UNMIK Human Rights Advisory Panel, (O/SRSG). He was appointed as the Senior Legal Officer and Head of the Panel Secretariat, EU Human Rights Review Panel in April, 2010. His article on the UNMIK Human Rights Advisory Panel, United Nations Mission in Kosovo was published in the Irish Defence Forces Annual Review, 2010.

**Ms Joanna Marszalik**, a Polish citizen, graduated with a Master of Laws from the Jagiellonian University in Krakow, Poland. For five years she worked as a lawyer in the European Court of Human Rights in Strasbourg, France. Subsequently, she was the Project Manager for the Council of Europe institution building project “Support for Ombudsperson Institution in Kosovo” and the Team Leader of the Council of Europe and European Union project “Transparency and Efficiency of the Judicial System in Ukraine”, which supported reform of the Ukrainian judicial system. She joined the OSCE Mission in Kosovo in December 2010 where she worked as the Senior Human Rights Officer, supervising the Regional Centre in Pristina. She was appointed as a Legal Officer in the Panel Secretariat in April 2012.

**Mr Florian Razesberger**, an Austrian citizen, studied law at the Universities of Vienna, Copenhagen and Innsbruck. He started working as a Law Clerk at the Regional Court of Innsbruck before being appointed as an Assistant Legal Officer within the Presidency and Chambers of the International Criminal Court in The Hague. He subsequently worked as a Legal Adviser with “Africa Middle East Refugee Assistance” in Cairo, Egypt. Thereafter, he took up the position of Legal Advisor with the OSCE Missions in Skopje and consequently in Sarajevo. Subsequently, he worked as a Human Rights Officer and Team Leader for the United Nations Assistance Mission in Afghanistan. Mr Razesberger joined EULEX Kosovo as a Human Rights Expert before being appointed a Legal Officer at the Panel Secretariat.

**Ms Shpresa Gosalci**, Kosovo Albanian, a graduate of the AAB University, Prishtina, in English Language and Literature. She was employed as Interpreter (Albanian/Serbian/English) with KFOR from July 1999 to June 2000 and as Administrative/Language Assistant in the UNMIK Police Commissioner’s Press and Public Information Office from June 2000 until March 2009. She is Administrative /Language Assistant with the Panel Secretariat since July, 2010.

**Ms Katica Kovacevic**, Kosovo Serbian, was previously employed as Administrative/Language Assistant (Serbian/English) in the Office of the Auditor General from May, 2003 until December, 2008 and as Language Assistant with the Privatization Agency of Kosovo from January, 2009 to

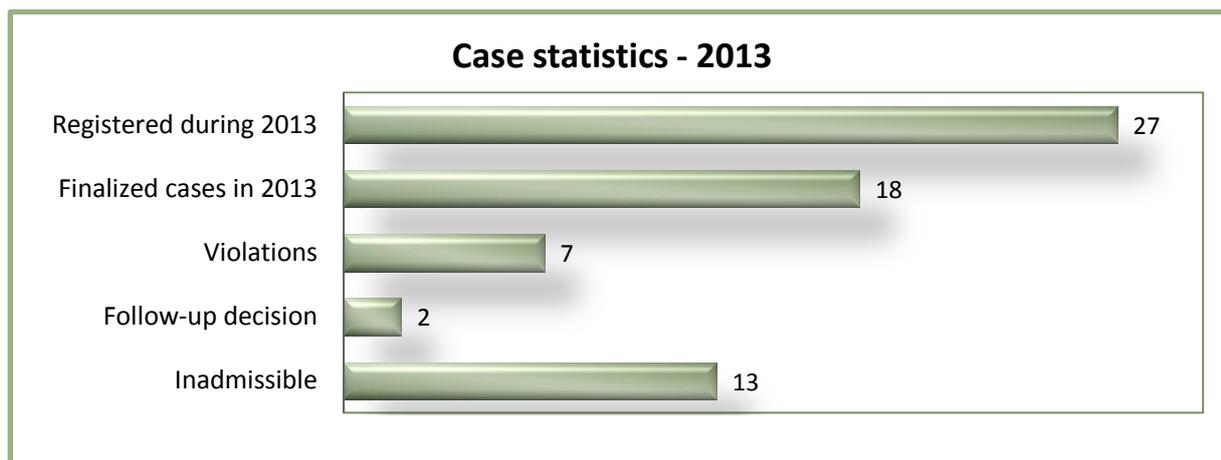
November 2010. She commenced her assignment as an Interpreter/Translator with the Panel Secretariat in December, 2010.

**Mr Kushtrim Xhaferi**, Kosovo Albanian, is a graduate of the University of Prishtina, Kosovo, in English Language and Literature. He previously worked as an Interpreter/Translator (Albanian/English) with Kosovo Energy Corporation from February, 2004 to January, 2009 and as a language assistant with EULEX Police Component thereafter. He is Interpreter/Translator with the Secretariat since September, 2010.

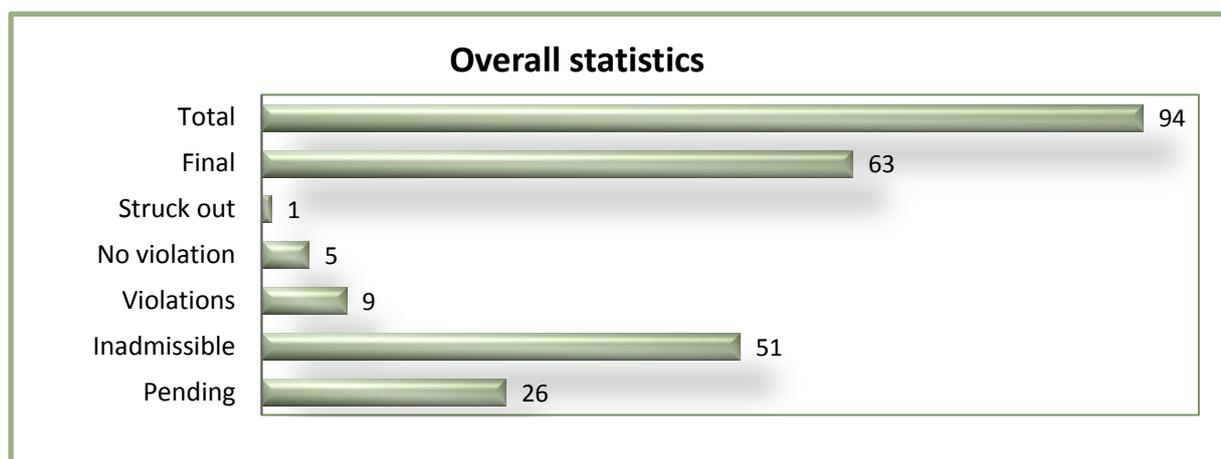
## 4. Caseload and subject matter of complaints

### 4.1. Caseload and statistics

In 2013, the Panel reviewed 35 cases, communicated 17 cases to the Head of Mission with request for observations on their admissibility and merits and delivered 21 decisions. In contrast to previous years, the Panel found a number of human rights violations. In four decisions that dealt with a total of eight complaints, the Panel found violations of Articles 8, 9, 11 and 13 of the ECHR. 14 cases have been declared inadmissible. This included one case in which the Panel, for the first time, re-examined a complaint.



During 2013, 27 new cases have been registered with the Panel, which amounts to an increase of 13% compared to the previous year. Since its inception, the Panel has seen a slow but steady increase in its caseload. By the end of 2013, a total of 94 cases have been submitted to the Panel, out of which 63 have been closed.



### 4.2. Trends

While a few complaints related to alleged rights violations by EULEX resulting from the Mission's actions, the majority of alleged violations are said to be the result of the EULEX alleged failure to act. Such complaints are related in particular to alleged prosecutorial refusal to institute investigations

and/or failure to bring an indictment, as well as allegations that EULEX police did not adopt reasonable measures to protect complainants from harm from third parties.

### 4.3. Subject-matter of complaints

The most common types of alleged human rights violations examined by the Panel were as follows:

- Allegations of a violation of the right to life (Article 2 ECHR): cases of *Y against EULEX*, no. 2011-28; *Faik Ibishi against EULEX* no. 2012-07; *E against EULEX* no. 2012-17;
- Allegations of violations of prohibition of torture, inhuman or degrading treatment (Article 3 of ECHR, Article 6 paras 1 and 2 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment): cases *W against EULEX*, no. 2011-07; *F against EULEX*, no. 2011-27; *Z against EULEX*, no. 2012-6; *Mufail Halili against EULEX* no. 2012-08; *Arsim Krasniqi against EULEX*, no. 2013-02; *Almir Susaj against EULEX*, no. 2013-16;
- Allegations of a violation of the right to liberty and security (Article 5, pars 1c, 2, 3 and 4 ECHR, Article 9, pars 2 to 4 of the International Covenant on Civil and Political Rights): case *Z against EULEX*, no. 2012-12; *E against EULEX*, no. 2012-17;
- Allegations of a violation of the right to a fair trial (Article 6 ECHR): cases of *Faik Ibishi against EULEX* no. 2012-07; *Z against EULEX*, no.2012-06; *Mufail Halili against EULEX* no. 2012-08
- Allegations of a violation of the right to a fair trial (Article 6 ECHR) in conjunction with a violation of the right to the peaceful enjoyment of one's possessions, Article 1 of Protocol No. 1 to the ECHR: cases of *Shaip Gashi against EULEX*, no. 2011-25; *Shefqet Emërllahu against EULEX* no. 2012-15; *Kristian Kahrs against EULEX*, no. 2012-16;
- Allegations of a violation of the right to respect for private and family life (Article 8 of ECHR): case *W against EULEX*, no. 2011-07;
- Allegations of violations of the right to freedom of thought, conscience and religion (Article 9 of ECHR), the right to freedom of expression, (Article 10 of ECHR) and the right to freedom of assembly and association (Article 11 of ECHR); *A. against EULEX*, no. 2012-09; *B. against EULEX*, no. 2012-10; *C. against EULEX*, no. 2012-11; *D. against EULEX*, no. 2012-12; *H against EULEX* no. 2012-19; *G against EULEX* 2012-20
- Allegations of violations of the right to an effective remedy (Article 13 of ECHR) in conjunction with
  - Article 6: *Z against EULEX*, no. 2012-06; *Faik Ibishi against EULEX* no. 2012-07
  - Article 8: *Valbone Zahiti against EULEX*, no. 2012-14
  - Articles 8, 9, 10 and 11: *A. against EULEX*, no. 2012-09; *B. against EULEX*, no. 2012-10; *C. against EULEX*, no. 2012-11; *D. against EULEX*, no. 2012-12; *H against EULEX* no. 2012-19; *G against EULEX* 2012-20
- Allegations of violations of the right to the peaceful enjoyment of one's possessions (Article 1 of Protocol No. 1 to the ECHR): *Kahrs against EULEX*, no. 2012-16;

The complainants referred to on a number of other international human rights instruments:

**International Covenant on Civil and Political Rights**

Complainants invoked inter alia Articles 2, 5, 6, 7, 9, 14, 16, 17, 18, 19, 21, 22, 23, 25, 26, 27 the International Covenant on Civil and Political Rights (ICCPR).

**Universal Declaration of Human Rights**

Articles 1, 2, 7, 8, 10, 11, 12, 17, 28 and 29 of the Universal Declaration of Human Rights were also invoked.

**Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

Complainants referred in general to the Convention against Torture.

**Convention for Elimination of all forms of Racial Discrimination**

Article 1, paragraph 1 and 2, Article 2, paragraph 1, item a, b, c, Article 5, item a and b, and Article 6 of the Convention for Elimination of all forms of Racial Discrimination (CERD) have been invoked for the first time.

## 5. Jurisprudence

As mentioned above, 2013 was marked by the highest number of human rights violations ever determined by the Panel within a calendar year.

### 5.1. Merits

Human rights violations by EULEX have been found in the following cases:

#### 5.1.1. *W against EULEX* – the disclosure of the witness’s personal data

On 10 April 2013, the Panel decided unanimously that EULEX Kosovo violated Article 8 of the ECHR, i.e. a right to respect for private and family life, in case no. 2011-07, *W against EULEX*. The complainant alleged that EULEX Kosovo prosecutors had shared his witness statement and personal information with the state authorities in Serbia in the context of a war crimes investigation. The Panel found that there was inadequate justification and inadequate safeguards for the disclosure of the complainant’s personal data. In particular there was no apparent legal basis for the EULEX prosecutors’ actions and the complainant’s objections to the disclosure were disregarded. This, in consequence denied the complainant a possibility to contest them in local courts.

The Panel addressed issues of “legitimate aim”, “necessity” and “proportionality” of the interference with the complainant’s rights. It was satisfied that co-operation with Serbian authorities pursued the legitimate aim of prevention of disorder and crime within the meaning of par. 2 of Article 8 of ECHR. The Panel stressed that “[t]he investigation and prosecution of war crimes and other international crimes is unquestionably an aim which should be energetically pursued and which, in some circumstances, might warrant setting limitations to the rights guaranteed under Article 8 of the [ECHR]”. However, The Panel was not persuaded that a fair balance had been struck between the complainant’s private life and the legitimate aim of conducting an effective investigation.

The Panel observed that “it is a normal civic duty for individuals to give evidence in criminal proceedings ([the European Court of Human Rights judgment in] *Voskuil v. the Netherlands no. 64752/01, judgment of 22 November 2007, par. 86*)”.

Nevertheless, the responsibility to investigate and prosecute serious crimes also entails responsibilities on the part of competent authorities to protect those who provide them with information. Interests of witnesses are, in principle, protected by substantive provisions of the Convention, which imply that criminal proceedings should be organised in such a way that those interests are not unjustifiably imperilled. It may imply a positive obligation on the part of the authorities to take measures to ensure the safety and security of witnesses although this obligation must not impose an impossible or disproportionate burden on them.

The Panel noted that, considering the gravity of the alleged crimes in relation to which the complainant provided information, the genuine fear he had expressed and the volatile environment in which he lives, EULEX Prosecutors knew or ought to have known that the unconditional disclosure of his statement together with his personal data to the Serbian authorities could expose him and his family to potential harm.

EULEX Prosecutors failed to take measures within the scope of their powers which could be expected in order to avoid or reduce that risk (e.g. they could have redacted the identifying features of the witness or seek protective measures or non-disclosure orders from the competent authorities in Serbia prior to communicating his statement to them).

The Panel found, therefore, that EULEX Prosecutors had not taken measures that could reasonably have been expected of them in the circumstances and potentially exposed the complainant and his family to unjustified risk. Nor was there any indication that EULEX had conducted a risk assessment to determine what measures might be warranted in the circumstances to protect their interests. The Panel concluded that, *“in the circumstances of this case, the legitimate aim of prosecuting those suspected of having committed war crimes was not a sufficient reason to justify disclosing the complainant’s statement and personal details without his consent, without a proper legal basis, without judicial oversight and without any protective measures having been taken to limit the risks involved in the disclosure of that information”*.

The Panel also recommended a number of remedial measures to be adopted by the Head of Mission to address the matters at issue.

#### *Follow up decision on the Panel’s recommendations*

In the Panel’s [follow up decision](#) of this case which was adopted on 27 November 2013, the Panel held that the Head of Mission of EULEX implemented the Panel’s recommendations in part only. While some of the Panel’s recommendations were implemented, it was noted that the recommendation that EULEX Prosecutors should request their Serbian counterparts to return or destroy copies of documents which bear the name of the complainant and to redact any information in other documents that could identify him was not implemented. Further, the *a posteriori* risk assessment as recommended by the Panel was not carried out. The Panel consequently invited the Head of Mission to reconsider the implementation of its recommendations.

#### 5.1.2. The *Vidovdan* cases – the obligation of EULEX to protect human rights

##### *A, B, C & D against EULEX*

The Panel declared that there were violations of human rights by EULEX in the conduct of its executive mandate in relation to incidents in [four cases](#) which had occurred on *Vidovdan*, 28<sup>th</sup> June 2012. The feast of *Vidovdan* marks an important religious holiday when thousands of ethnic Serbs attend memorial sites in Kosovo, the principle site being Gazimestan, the location of the monument which commemorates the battle of Kosovo Polje in 1389.

Four complainants submitted that they were the subject of attacks by non-identified private parties, which included, *inter alia*, the throwing of stones and Molotov cocktails at Serb teenage children travelling on buses from Gazimestan to Gračanica/Graçanicë after the *Vidovdan* celebrations. Another complainant submitted that he had been assaulted by Kosovo Police.

The Panel held that the inadequacy of resources allocated by EULEX to its security operation on that day had contributed to the complainants being denied the full and effective enjoyment of their right to respect to private life, their freedom of assembly as well as their right to exercise their religion safely and without unnecessary hindrance. The Panel stated that *“it [was] precisely the absence of EULEX police at the scene and the absence of the necessary foresight which gives rise to concern.”* Within the limit of its executive mandate, and according to the availability of its resources the Panel was of the view that *“EULEX should have ensured that an adequate number of EULEX police officers were assigned to monitor those events, that they be placed at critical locations (e.g., administrative boundary entry points; roads to and from those entry points and at identified gathering places as well as at Gazimestan; etc), that they had all the necessary means at their disposal, for instance, in terms of transport and communication as well as means of enforcement, to perform their functions*

*effectively and that they were given clear instructions and guidance as to when and in what circumstances they were required and expected to intervene to prevent human rights violations, including the prevention of intimidating or aggressive behaviour by private parties.”*

Furthermore, the Panel held that EULEX failed to show that it had conducted a thorough and adequate investigation into the alleged human rights violations. As a result, the complainants were denied an adequate remedy for the violation of their rights. The Panel also recommended a series of remedial measures to be adopted by the Head of Mission to address the matters involved in the case.

#### *H & G against EULEX*

The Panel declared that there were violations of human rights by EULEX Kosovo in the conduct of its executive mandate in relation to [two further cases](#) which occurred on *Vidovdan*, 28 June 2012.

The complainants who were participants in those celebrations submitted that they had been stopped by the Kosovo Police at the *Merdare* crossing point. The Kosovo Police confiscated their belongings which included t-shirts bearing Serbian emblems and Serbian flags and uttered threats against the complainants.

The Panel followed the reasoning of its earlier decisions in cases arising from the *Vidovdan* celebrations of 2012, noting the obligation of EULEX under the [Council Joint Action](#) to ensure that its activities should be carried out in compliance with international standards of human rights.

In this regard, the Panel noted *“that EULEX is not expected to provide better policing than the resources put at its disposal would allow. EULEX is obliged, however, to take necessary and reasonable measures within the scope of its competence to provide for the effective protection of the human rights of those who find themselves on the territory of Kosovo”*.

The Panel held that *“the absence of necessary foresight in connection with the planning of the annual Vidovdan celebrations, and, as a result, the absence of a sufficient number of EULEX police officers at the scene gives rise to concern. The Panel notes the absence of detailed operational documentation and contingency planning. It could have been foreseen by EULEX that the Merdare entry point, as one of the main crossing points, would be used by large numbers of participants in the Vidovdan celebrations to enter Kosovo. The Panel held that EULEX had allocated insufficient resources to ensure respect for human rights by the Kosovo authorities and third parties during the Vidovdan security operation. Further, the Panel stated that EULEX had provided inadequate training and insufficient operational guidelines to its staff who were deployed on that day.”*

Therefore, the right of the complainants to respect for private life, their right to freedom of assembly as well as their right to exercise their religion were not effectively guaranteed and protected by EULEX in the performance of its mission. The Panel also recommended a series of remedial measures to be adopted by the Head of Mission to address the matters concerned.

The Panel would like to avail of this opportunity to acknowledge the action taken by the Head of Mission and EULEX Kosovo in the adoption of the remedial measures which it recommended in its decisions in cases *A, B, C & D against EULEX* as well as in cases *H & G against EULEX*, “the *Vidovdan* cases”. The Panel is pleased to note that its recommendations apparently served as guidelines for the preparation of *Vidovdan* celebrations in 2013 which went well and no incidents were noted of the kind which had given rise to the complaint regarding the 2012 events.

## 5.2. Admissibility

In a number of decisions the Panel addressed various important issues pertaining to the admissibility of complaints before it:

### 5.2.1. The Panel's competence to review proceedings before Kosovo Courts

In a number of decisions (e.g. cases no. 2012-06, *Z against EULEX*; no. 2012-17, *E against EULEX*), the Panel reiterated its position that, according to Rule 25, paragraph 1 of its Rules of Procedure, based on the accountability concept in the OPLAN of EULEX Kosovo, it has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts (see 2.2 above). The fact that EULEX judges sit on the bench does not modify the character of these courts as Kosovo courts.

In the same cases, the Panel upheld its view that the actions of EULEX prosecutors taken within the context of criminal investigation were part of the executive mandate of EULEX Kosovo and therefore fell within the ambit of the Panel's mandate. Actions or omissions by EULEX prosecutors during the investigative phase of criminal proceedings are not to be considered as forming part of "judicial proceedings" for the purpose of determining the Panel's competence. Their actions are, therefore, subject to the reviewing authority of the Panel where human rights violations are alleged to have occurred.

Furthermore, it cannot be excluded that the Panel might be competent to evaluate the actions of EULEX prosecutors in criminal investigations even if they are subject to judicial review. The Panel would be competent to examine their actions which raise issues of human rights. The Panel would only intervene in such cases, however, if allegations of human rights violations attributed to the prosecutor have not been fully addressed by the competent judicial authorities (such as, e.g., a right to personal liberty and security within the meaning of Article 5 of the ECHR: see par 5.2.2. below, compare and contrast with *Z against EULEX*, 2012-06, 10 April 2013 at para 35).

### 5.2.2. The Panel's competence to review lawfulness and length of pre-trial detention

In case *Z against EULEX*, the Panel found that it lacked jurisdiction to examine the complaints concerning the alleged unlawfulness and excessive length of the complainant's pre-trial detention. It observed that all the decisions on the complainant's detention, both as to its imposition and subsequently about its extension were given by the judicial authorities. These decisions were appealed by the complainant and subsequently examined by the appellate courts. The courts were given an opportunity to examine the complainant's submissions challenging the lawfulness of his detention order and of the subsequent decisions extending his detention. Consequently, having regard to the fact that the complainant's detention was imposed by the court and that its lawfulness was subsequently reviewed, following the complainant's appeals, also by the courts, the Panel had no competence to review the manner in which those courts examined its lawfulness.

### 5.2.3. Monitoring, mentoring and advising and the executive mandate of EULEX

In one case, the complainant alleged that EULEX Police that apparently acted in a "monitoring, mentoring and advising role" (MMA) did not protect his human rights. EULEX's MMA activities provide support to Kosovo institutions, judicial authorities and law enforcement agencies, monitoring, mentoring and advising them in order to develop and strengthen the rule of law. In regard to the executive mandate of EULEX and its relation to MMA activities, the Panel assessed to what extent EULEX activities that are not linked to typical executive actions, can nevertheless be found to fall within the ambit of its executive mandate and trigger the Panel's jurisdiction. The Panel held "*that MMA activities can carry a positive obligation to take action where immediate*

*intervention is needed in view of the protected right” (see Kahrs v. EULEX, 2012-16, 10 April 2013 at par. 28). The Panel reasoned that “given the limited mandate of EULEX it cannot be held responsible for failing to guarantee an effective protection of human rights as such in Kosovo and that an impossible or disproportionate burden as regards policing cannot be imposed on the Mission”. Further, “within the context of MMA the obligation for EULEX officers to act in order to prevent human rights violations can be said to arise when they are faced with a threat of any imminent and serious violation of individual rights, regardless of the subject matter of the right concerned. The nature of the response should be appropriate to the circumstances and, in turn, depend on what right or rights were at stake and on the seriousness of the threats to those rights” (compare Kahrs v. EULEX, 2012-16, 10 April 2013 at par. 31, where the Panel held that that EULEX police officers acting in the MMA capacity, in the circumstances complained of, were not obliged to intervene and act in their corrective capacity).*

#### 5.2.4. Victim status

In several cases the Panel was concerned with the question of whether the complainant could claim to be a victim of a violation of his or her right. The Panel has stated that “[a]s to the meaning of the word “victim”, the European Court of Human Rights (ECHR) has found on many occasions that a “victim” within the meaning of the Convention denotes the person directly affected by the act or omission in issue (see, among many authorities, *Amuur v. France*, 25 June 1996, § 36, Reports of Judgments and Decisions 1996-III). On several occasions, when there was a personal and specific link between the direct victim and the applicant, the Court accepted an application from a person, who was considered an indirect victim. Whether a person is such a victim will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include, among others, the existence and proximity of the family tie, the particular circumstances of the relationship, the extent to which the person witnessed the events in question, (see, *mutatis mutandis*, *Kurt v. Turkey*, judgment of 25 May 1998, Reports 1998-III, §§ 130-134; *Yaşa v. Turkey*, judgment of 2 September 1998, Reports on Judgments and Decisions 1998-VI, § 71; and conversely, *Çakıcı v. Turkey [GC]*, no. 23657/94, §§ 98-99, ECHR 1999-IV).”

In the case of *Ibishi against EULEX* (no. 2012-07), the complainant alleged that he was aware of the existence of a widespread and influential paedophile network in Kosovo, involving both local and international residents, including EULEX staff. The Panel stated that its “Rules of Procedure do not, therefore, envisage the bringing of an *actio popularis*; they do not permit individuals to complain against alleged actions and omissions on the part of EULEX in abstracto simply because they feel that they infringe human rights. The Panel notes that there is no indication that the complainant himself has ever been a victim of the criminal activities of the alleged paedophile ring. Nor has it been shown that he has any family member who has been a victim of the alleged paedophile ring. He therefore cannot claim to be either a direct or indirect victim in the present case. Therefore, the alleged refusal by EULEX to carry out an investigation into their actions does not affect the complainant’s rights in any way.”

Similarly, in the case no. 2012-15, *Emerllahu against EULEX*, where the complainant’s grievance concerned a criminal conviction of a third person the Panel found that the complainant did not provide any details which would establish that his relationship with that person was close enough to consider him an indirect victim of the alleged violations.

#### 5.2.5. Corruption and human rights

In the case of *I against EULEX* that also dealt with the question of victim status, the complainant suggested that the alleged corrupt behaviour of a mayor resulted in the direct violation of his and his fellow citizens' human rights. The Panel held that "*in certain situations corruption may indeed amount to or involve a threat to the effective enjoyment of human rights. The Panel emphasizes that corruption, in so far as it undermines the rule of law and the confidence of citizens in the effectiveness of the legal system, may constitute an obstacle to the effective realization and enjoyment of human rights*" (see *I against EULEX*, 2013-01, 25.11.2013 at par. 19). The Panel did "*not exclude that corrupt behaviour of a public official could confer victim status on an individual whose human rights are affected by such conduct. However, for this to be the case, it would be necessary to establish a link between the alleged corrupt conduct and the detrimental consequences for that individual's human rights*" (see *I against EULEX*, 2013-01, 25.11.2013 at par. 21). No such link was established in the case.

#### 5.2.6. Re-examination of a complaint

In the case no. 2011-28, *Y against EULEX*, the complainant asked the Panel for a re-examination of its inadmissibility decision of 15 November 2012 in accordance with Rule 42 of the Panel's Rules of Procedure, arguing that the Panel in its ruling had not taken into account certain documentary evidence.

The Panel accepted the request but upheld its original decision. It considered that the re-examination procedure provided for in Rule 42 was intended to provide a procedural mechanism whereby a complainant can seek re-examination of an inadmissibility decision where a new fact which he could not reasonably have known of at the time of the initial complaint would have had a decisive influence on the Panel's findings.

In that case, the complainant had failed to point to any new fact relevant to the application of Rule 42 and failed to establish how new documents would have a decisive influence on the findings made by the Panel in its inadmissibility decision.

#### 5.2.7. Article 3 of ECHR

Several cases concerned complaints under Article 3 of ECHR, mostly relating to alleged ill-treatment in prison (*Krasniqi against EULEX*, 2013-02 and *Susaj against EULEX*, 2013-16). All those complaints were found inadmissible. The Panel reiterated the established case-law of the ECtHR that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. It found that in none of the cases before the Panel had complainants provided any details which would allow it to conclude that their treatment amounted to torture, inhuman or degrading treatment within the meaning of Article 3 of the ECHR or within the meaning of Article 1 of the Convention against Torture, or Article 165 of the Provisional Criminal Code of Kosovo (PCCK).

In case no. 2012-08, *Halili against EULEX* the Panel examined the procedural obligation of EULEX to investigate alleged violations of Article 3 of the Convention and noted that it may arise in certain circumstances. Namely, article 3.3. of the Law no. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (the Law on Jurisdiction) enumerates criminal offences triggering the competence of EULEX prosecutors. Under Article 12 of the Law on Jurisdiction, EULEX prosecutors had the authority to take over an investigation or prosecution of any other criminal offences, in case Kosovo prosecutors were unwilling or unable to perform their duties and this unwillingness or inability could endanger the proper investigation or prosecution of the matter. The Panel pointed out, however, that for such a possibility to arise, the case would have to

be first referred to a local public prosecutor. If then a local prosecutor was unwilling or unable to deal with it, the complainant could notify the Chief EULEX Prosecutor, who would then decide whether to assign the case to another Kosovo public prosecutor or to an EULEX prosecutor. Since that was not the case, the Panel found that the complaint fell outside the ambit of the executive mandate of EULEX Kosovo and, consequently, outside its own jurisdiction.

## **6. Activities of the Panel**

### **6.1. Public Outreach Campaign 2013**

The Accountability Concept Document of 29 October, 2009 stated, inter alia, in Para E, that "...EULEX Kosovo will ensure a proper dissemination of public information on the Panel and its work ...".

The Civilian Operations Commander stated in Para 3 of his Instruction of 13 November, 2009 in relation to the Panel that the "Road Map" for the Civilian Planning Conduct Capability should include, inter alia, "preparation of a comprehensive PR campaign".

Accordingly, the Panel, as outlined earlier in this report, has been engaged in the conduct of an extensive outreach campaign to inform the public at large about the Panel since June 2010. The campaign has been quite effective in raising awareness of the Panel, especially in urban areas where EULEX has a higher profile.

However, as stated in previous annual reports, despite the best efforts of the Panel, there continues to be a distinct lack of awareness and knowledge of the Panel, its mandate and operations among the general population in some urban and in many rural areas. It is therefore felt that the broadcast of a TV and radio advertisement in 2014 would greatly assist the Panel in reaching out to the wider urban and rural population, in particular, in the more remote regions of Kosovo.

The Panel and the Secretariat continued with the implementation of its outreach campaign in 2013. The main thrust of the campaign was focused on the Kosovo judiciary, NGOs, civil society representatives as well as on church and other religious bodies. The Panel also engaged in media interviews and the Secretariat attended various human rights related conferences, seminars and debates. The Secretariat and Panel increased its outreach campaign activities in north Mitrovica as the security situation allowed.

The Secretariat also conducted an outreach campaign visit to Serbia where it held a seminar for the Project "Further Support to the Implementation of the Strategies for IDPs, Refugees and Returnees - Legal Aid" funded by the Delegation of the European Union in Serbia. Subsequently the Panel and the Secretariat met with the Project staff on two other occasions, to update them on its activities and to provide a presentation on Article 6 of of the ECHR.

The format for the outreach campaign meetings consisted of a short presentation on the mandate, procedures, functions and operations of the Panel as well as a brief on the applicable law under which the Panel functioned. There was also provision for questions and answers as well as discussion and debate when appropriate. Panel information materials such as leaflets and posters in the English, Albanian and Serbian languages were also distributed.

In 2013, the Panel continued with its periodic meetings with the Head of Mission, the Deputy Head of Mission and other senior EULEX officials. Upon the invitation of Ms Jaroslava Novotna, Deputy Head, Executive Division and Chief EULEX Prosecutor, the Panel made a presentation on its mandate, operations and procedures for EULEX international prosecutors and legal officers, elaborating on the Panel's jurisprudence with a particular emphasis on complaints brought to the Panel concerning decisions and acts of EULEX prosecutors.

There has been some welcome progress in the preparation to the Panel's TV and radio campaign. A short TV spot, explaining the role of the Panel and providing information on the complaint procedure, has been filmed and edited by the EULEX Press and Public Information Office.

## 6.2. Induction training for EULEX staff

The Secretariat participated in the EULEX induction training program for incoming EULEX staff members. The format consists of a presentation on the Panel with time allocated for questions and answers. This is a very useful forum to brief future staff members on the mandate of the Panel and to raise the profile of the Panel with EULEX staff members in the mission area.

This is considered to be particularly important in that it provides the Panel with an opportunity to brief EULEX staff members in the Executive Division on the accountability implications for breaches of human rights in the exercise of their executive functions. The Panel considers this to be an important opportunity to ensure that all incoming staff are aware of their obligation to comply with relevant human rights standards in the performance of their function.

## 6.3. Website

The Secretariat is responsible for the upkeep and maintenance of the Panel website at: [www.hrrp.eu](http://www.hrrp.eu). The site contains useful information on the mandate, functions, activities and operations of the Panel as well as press releases and the current status of pending and finalised cases, including all the decisions made by the Panel.

It also stores information on the applicable human rights law as well as application forms and instructions for filing complaints in the English, Albanian and Serbian languages. The caselaw of the Panel is organised so that interested parties may readily access it and is easily searchable. The Secretariat constantly strives to further develop and improve the website. In 2013 it added [the table of the Panel's jurisprudence](#). The table enables searches of the Panel's growing case-law by subject matter (both on admissibility and substance) and was created to provide ready access to the case law of the Panel.

## **7. Operational/Administrative/Personnel Matters**

### **7.1. Inadmissibility of complaints**

As in previous years, the Panel found that a high percentage of complaints submitted to the Panel were inadmissible. These complaints contained, *inter alia*, the following shortcomings: they were manifestly ill-founded in the sense that they presented no *prima facie* evidence of human rights violations; they fell outside of the executive mandate of EULEX and, consequently, were outside of the Panel's jurisdiction; complaints were filed after the expiry of the time limit laid down in the Panel's Rules of Procedure (see Rule 25 par. 3) or were incompatible *ratione temporis* as they related to events which had occurred before the establishment of the Panel.

It is noted that complainants are very rarely represented by lawyers and it would appear that they often regard the Panel as a body of last resort when all other possible remedies have been exhausted. It may also be the case that complainants vent their frustrations through the Panel for the sometimes exceedingly slow pace of judicial proceedings before Kosovo courts.

The Panel will seek to address these issues and shortcomings with an increased emphasis on the provision of information on admissibility criteria for complaints in the outreach campaign in 2014.

### **7.2. Budget**

The Panel does not have a dedicated budget and is entirely dependent on the EULEX budgetary system in this regard. This arrangement did not significantly hamper/hinder the day to day operations of the Panel throughout the reporting period. However, more budgetary discretion would, for example, enable the Panel to make its own decisions on purely administrative issues such as the expansion of the outreach campaign, in particular, the launch of a TV/Radio broadcast, without recourse to the discretionary resources of EULEX Kosovo.

The Panel is otherwise satisfied with the support provided by EULEX. It must be re-emphasised, however, that access to its own budgetary resources would greatly assist the Panel in its operations. This would also further enhance the actual and perceived independence of the Panel and thereby add value to the EULEX Kosovo mission and further enhance the credibility of EULEX as a Common Security and Defence Policy (CSDP) mission in a human rights context.

The Panel would like to take this opportunity to record its appreciation in respect of the excellent cooperation and the overall administrative support and assistance that it has received so far from EULEX Kosovo and in particular, for the competent service provided by the Human Rights and Legal Office, it being the conduit through which the Panel communicates with EULEX Kosovo in the context of the examination of the cases.

## 8. International Commentary on Human Rights Accountability for International Organizations

### 8.1. “European exceptionalism?”

George Nolte and Helmut Philip Aust, Humbolt University, Berlin, Germany [*Global Constitutionalism* (2013), 2:3, 407 – 436,] Cambridge University Press, 2013.

1. The authors elaborate in their paper on the presence of the EULEX mission in Kosovo which was introduced after the unilateral declaration of independence 2008. Whereas EULEX has less significant executive powers than the previous UNMIK mission, it retains certain executive powers. These powers are mainly correctional but they also include the investigation and prosecution of serious and sensitive crimes.
2. To review compliance of the exercise of these powers with human rights, the EU has instituted the Human Rights Review Panel, (HRRP). However, the “accountability concept” of the HRRP is a restricted document which raises questions with respect to transparency and legal certainty. The HRRP cannot take binding decisions against acts of EULEX, but merely “submits its findings to the Head of Mission and, where necessary, makes non-binding recommendations for remedial actions”. It was also noted in the article that the Panel recommendations cannot result in monetary compensation.
3. Although the executive competences of EULEX are rather limited, the symbolic dimension of the arrangements would appear to be that the European Union is not prepared to subject itself to the same standards of binding judicial review which it requires, for example, of candidate countries as a condition for joining the European Union.
4. Reference is made to the point which the Venice Commission of the Council of Europe carefully insisted upon in its 2010 Opinion concerning this arrangement:

“The EU Human Rights Review Panel appears to be generally in conformity with the recommendations which the Venice Commission had formulated in 2004 in respect of an advisory mechanism of human rights review for Kosovo. The Venice Commission wishes to stress, however, that those recommendations had been made in a context of a post-conflict emergency situation with only partly operating institutions. A different situation pertains in Kosovo today, and in this respect, the Venice Commission is of opinion that, as long as the acts of EULEX are supportive or corrective within a generally peaceful situation, EULEX should be put under a more stringent review<sup>2</sup>.”

### 8.2. “Establishing Accountability for Inter-Governmental Organisations and States”

Essay by Andrea Raquel Hak, e-International Relations, September 21, 2013<sup>3</sup>

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<sup>2</sup> See European Commission for Democracy through Law (Venice Commission), Opinion on the Existing Mechanisms to Review the Compatibility with Human Rights Standards of Acts by UNMIK and EULEX in Kosovo adopted 17-18 December 2010, CDL-AD(2010)051 Para 58.

<sup>3</sup> <http://www.e-ir.info/2013/09/21/establishing-accountability-for-igos-and-states>.

## Introduction

1. The contemporary international human rights regime has evolved slowly but progressively since the beginning of the 20<sup>th</sup> century. One of the reasons for this slow progression has been due to the inherent conflict between international human rights and traditional state sovereignty. Increasingly states continue to accept the need for a common human rights system by submitting to international standards.
2. However, from the creation of the Universal Declaration of Human Rights (UDHR) to the subsequent UN Treaty body system, states have been the primary focus of the international human rights regime. Due to the state centric nature of the UN, it is only states that can ratify human rights treaties. Only states, and more recently individuals, can be tried for grave violations of human rights at the International Court of Justice and the International Criminal Court. Finally, it is states that have the power to contribute to international decision-making on global issues.

## Aim of the Essay

3. Today, 90 percent of the world's conflicts are internal within a recognized state rather than occurring between states. The nature of this type of conflict has meant that many individuals have now found themselves under the effective control of non-state actors including international organizations and non-recognized states. One of the most salient examples has been that of Kosovo.
4. The aim of this essay is to discuss how these developments have gone against the contemporary international system and what this effect this could have on the situation of non-recognised states and international organisations. The situation in Kosovo and the role of the EU Human Rights Review Panel are discussed as an example of how the current human rights regime can be rendered ineffective by the system that has been devised to protect it. The writer assesses the effects of this in Kosovo by the use of a legal and political analysis of the prevailing situation in Kosovo.

## The Human Rights Review Panel

5. The situation in Kosovo presents an important insight into the consequences of the exclusion of non-state actors from the state-centric international human rights regime. Throughout the Kosovo conflict and post-conflict period from 1999 up to the present time, different entities including international organizations, private companies, armed actors, and now the self-declared state of Kosovo have been active within the territory free from accountability. In this section, the author focusses on the effects that a lack of accountability and recognition by the international community can have in the post-conflict period.
6. The UNMIK mission took a step back from its operations in Kosovo in December, 2008 which paved the way for the European Union Rule of Law Mission in Kosovo (EULEX) to increasingly take over responsibilities, beginning with the rule of law sector. Judges in the EULEX court system have received positive feedback in the reports of the Ombudsperson due to their cooperation with the Institution, and an EU Human Rights Review Panel was established in 2009 to review complaints of human rights violations by EULEX.

7. However, the author notes that the Panel has only the authority to issue recommendations to the Head of Mission and an independent auditing report released last year showed that the mission has shown few results due to a lack of coordination, insufficiently qualified staff, and widespread corruption in Kosovo<sup>4</sup>. It was noted in the essay that EULEX had violated the rights of a group of witnesses whose names and testimonies were shared with the Serbian state authorities in a 2013 case reviewed by the Human Rights Review Panel.
8. It is the responsibility of EULEX Kosovo to protect the identities of witnesses, especially those that have been witnesses to violent crimes and who could be targeted for speaking out. According to the report, EULEX decided not to adopt interim measures that had been suggested to protect the witnesses, stating that the information had already been released and that protection measures would therefore have no effect.
9. Having established that UNMIK, EULEX and KFOR missions in Kosovo exercise effective control, the author ponders on why they are not held accountable for human rights violations, or at a minimum responsible for the obligations of occupying states towards individuals under their rule in accordance with humanitarian law. The author adds that it is ironic that the mission created to institute stability, rule of law and democratic self-government to the region is essentially autocratic in nature. While some may argue that it would be too complicated to hold an intergovernmental organization accountable under international law, on a positive note the author states that one could point to the EU's progressive decision to accede to the European Court of Human Rights (ECtHR):

“The EU's accession will strengthen therefore the protection of human rights in Europe, by submitting the EU's legal system to independent external control. It will also close gaps in legal protection by giving European citizens the same protection vis-à-vis acts of the EU as they presently enjoy from member states”<sup>5</sup>.

10. At a time when the European Union, an inter-governmental body with less power than UNMIK or KFOR over its citizens, will shortly be submitting itself to the jurisdiction of the ECHR, the author argues that there is no reason for international organizations to use diplomatic immunity as a shield, especially when the powers afforded them are absolute, and the environment in which they are operating is unstable and vulnerable due to a lack of legal and political protection. While the mission's mandate may have been created out of good will, centralizing absolute control in one entity is risky and could have an adverse effect on those whom it was initially intended to protect.

## Recommendations

11. The author states that as long as Kosovo has no official status and therefore no legal capacity to act on its own behalf within the international community, a UN or EU mission will have to continue to administer the territory. It is, therefore, time for the international community to let go of its out-dated concepts of sovereignty and statehood, and explore new solutions if one is to see the effective implementation of human rights in non-recognized states, such as Kosovo. To address the specific issues discussed in this essay, the author concludes that there are two challenges that need to be tackled, those of

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<sup>4</sup> Nielsen, 'Corruption Reigns in Kosovo Despite EU Millions', 2012, [HTTP://www.euobserver.com](http://www.euobserver.com)

<sup>5</sup>Council of Europe, "International organisations should be accountable when they act as quasi governments" Human Rights Commissioner Thomas Hammarberg.' Directorate of Communications: Press Release 450, 8 June, 2009.

international organizations operating in post-conflict situations and accountability for unrecognized states.

12. One necessary action is for missions which are effectively mandated to operate as 'surrogate states', by the UN or any other regional or international organization, to become party to the UDHR and other relevant UN Treaties. As the "Responsibility to Protect" has now given the UN the responsibility to protect civilians from the state, when acting in the capacity of a state, UN missions should also have a responsibility towards the individuals under their administration. Missions operating in conflict and post-conflict situations where rule of law and governance structures are weak should not be granted unlimited immunity, but should accept the jurisdiction of an international or regional court for their operations extraterritorially.
13. The purpose for the immunity given to UN missions is to allow them to operate free from intervention from the host state. As pointed out in the first Kosovo Ombudsperson report in a reference to UNMIK, "*when a mission is acting as a 'surrogate state' it has effective control of all administrative aspects and therefore does not need immunity from itself*"<sup>6</sup>.

Immunity for public authorities merely keeps a territory in a permanent state of public emergency in which human rights are suspended, and impunity is sheltered. As the Human Rights Commissioner of the Council of Europe stated in 2009:

"When international organizations exercise executive and legislative control as a surrogate state they must be bound by the same checks and balances as we require from a democratic government. Lack of accountability may undermine public confidence in the international organization and thereby its moral to govern. It also promotes a climate of impunity and sets a negative model for domestic governments"<sup>7</sup>.

14. Granting unrecognized states such as Kosovo non-member observer state status would allow them not only to accede to human rights treaties, but also give them the ability to enter into other international agreements and organizations. Having the ability to independently enter into international agreements could not only bring economic stability, but could also force them to improve rule of law structures to meet accession criteria.

Additionally, numerous empirical studies have shown that ratification of UN treaties in newly formed democratic states with high levels of human rights violations can have the greatest impact, particularly in those states with a strong civil society. This means that accession, coupled with continued support by the international community for civil society, could have a major impact. Finally, the ability to accede to international courts could provide Kosovo with a means of protection from other states, while accession to the International Criminal Code could be a valuable tool used to combat corruption.

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<sup>6</sup> Ombudsperson Institution in Kosovo, 'Special Report No 1 Page 8, 26 April, 2001.

<sup>7</sup> Council of Europe, "International organisations should be accountable when they act as quasi governments", Human Rights Commissioner Thomas Hammarberg' Directorate of Communications: Press Release 450, 8 June, 2009.

## Conclusions

15. The author states that the complex and multi-dimensional challenge of the establishment of accountability for international organizations and unrecognised states can be met by addressing the need for inclusion of non-state actors at the international level as both rights holders and duty bearers, particularly in post-conflict situations i.e. a global community in which all concerned are protected by and accountable for the implementation of global human rights standards. However, this can only be realized once the international community overcomes its attachment to traditional concepts of statehood and sovereignty.
16. The author concludes by saying that the progress that has been made in human rights accountability through the evolution of the “Responsibility to Protect” concept and the new status of Palestine should serve to highlight the advancement which can be achieved in the universal implementation of human rights when these concepts are not used as a barrier. In an age of globalization non-state actors are becoming increasingly important on the international scene and as such should be included in the evolving human rights regime.

### **8.3. “Accountability of international organisations for human rights violations”**

#### **Report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE), 17 December 2013, Doc. 13370<sup>8</sup>**

##### Introduction

1. The Bureau of the Parliamentary Assembly of the Council of Europe (PACE) decided to refer to the Committee on Legal Affairs and Human Rights for report, the motion for a recommendation on the “Accountability of international institutions for human rights violations” on 9 March, 2012. The Committee held a hearing on the issue with human rights experts on the basis of an *introductory memorandum* in Izmir, Turkey on 27 May, 2013. The Committee subsequently unanimously adopted the draft resolution and draft recommendation in Paris on 6 November, 2013. The texts are to be debated at the next session of PACE held in Strasbourg on 31 January 2014.
2. The introductory memorandum deals extensively with the concept of accountability for human rights violations in the exercise of executive power, the obstacles to the implementation of accountability, immunity before national courts/local tribunals as well as the waiver of same for international organisations in peacekeeping operations. The document also deals with international external human rights accountability mechanisms, internal accountability mechanisms and the accountability of member states.

##### The Accountability Concept

3. This report stresses that the essential basis of human rights accountability is the scrutiny of the performance of power wielders by seeking information, explanation and justification. Accountability of international organisations for human rights has traditionally been

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<sup>8</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20310&lang=en>

addressed as a matter of accountability towards the member states of the international organisation.

4. This introductory memorandum, in contrast, pays particular attention to the possibility for the individual applicant to invoke human rights accountability of international organisations. Given the legal nature of the benchmark in the present memorandum, the focus is primarily on adjudicative means of the implementation of accountability.

#### The Human Rights Advisory Panel and the Human Rights Review Panel

5. The explanatory memorandum refers to both the UNMIK Human Rights Advisory Panel (HRAP) established by the UN and the EU Human Rights Review Panel (HRRP) which was established with similar tasks with regard to EULEX<sup>9</sup>. The memorandum points out that both panels have been willing to address serious and controversial human rights violations. The report also mentions a lack of awareness within Kosovar society of the mandates and functions of the Panels.
6. The memorandum notes that the Panels have thus far issued a number of decisions, generally relying on the European Convention on Human Rights, and they have observed that the relevant organisations have violated Convention rights on a number of occasions. The Panels have also been willing to address serious and controversial human rights violations and observed that the UNMIK HRAP recently found in *Jočić* that UNMIK violated Articles 2 and 3 of the ECHR by failing to adequately investigate the disappearance and death of a Kosovar Serb civilian<sup>10</sup>.
7. Although the establishment of both Panels constitutes a considerable improvement in terms of human rights protection by international organisations in the executive role, the Panels have been the subject of some criticism, inter alia, in that their recommendations are not legally binding and that UNMIK and EULEX are not obliged to act upon them.
8. It notes that as of January 2012 UNMIK Kosovo had not provided compensation to the many victims of human rights violations as recommended by the Panel. In comparison, the EU HRRP is not even authorised to recommend the payment of compensation by EULEX<sup>11</sup>.
9. Additionally, the HRAP's jurisdiction was limited to actions by UNMIK following the Panel's creation in 2007, which followed upon the most significant period of violence which occurred in the region in 1998/99. This fact alone highlights the importance of instituting human rights review mechanisms at the *beginning* of an intervention by an international organisation rather than later on during the mission when the organisation may have already received a number of complaints of human rights violations.
10. The memorandum notes that both Panels provide a model or prototype for possible use by the United Nations and the European Union in future Peacekeeping and European Security

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<sup>9</sup> Accountability of International Organisations for Human Rights Violations, page 15, par. 58, Parliamentary Assembly, Council of Europe.

<sup>10</sup> Human Rights Advisory Panel, 23 April, 2013, Svetlana Jočić against UNMIK, Case no. 34/09. See also in this connection, Kosovo: UNMIK's Legacy, The failure to deliver justice and reparation to the relatives of the abducted, Amnesty International, 2013.

<sup>11</sup> EU Human Rights Review Panel, 2012 Annual Report, page 39.

and Defence Policy missions in which either organisation may take on an administrative/executive role.

11. The memorandum concludes with the observation that the future employment and use of such human rights accountability mechanisms, as well as the need to provide for bodies with the purview to monitor the implementation of the panels' decisions deserves continued attention.

#### **8.4. Amnesty International report: "Kosovo - UNMIK'S Legacy"**

"The Failure to Deliver Justice and Reparation to the Relatives of the Abducted", August, 2013<sup>12</sup>

##### *Introduction*

1. The UNMIK Human Rights Advisory Panel (HRAP) and EULEX were commented upon in the above Amnesty International report, specifically with regard to the steps that HRAP, EULEX Kosovo and other competent authorities might take to ensure that the criminal investigation into the disappearance and killing of the HRAP complainants family members in the aftermath of the 1998/1999 conflict be continued and that the perpetrators be brought to justice. The UNMIK Panel was established by the United Nations in 2007 to review complaints from applicants whose rights were allegedly violated by UNMIK in the exercise of its executive mandate.

##### *Matters at issue*

2. The report was based on the findings of the HRAP into the said disappearances and killings which were reviewed in 2012 and 2013. It stated that UNMIK's failure to investigate cases of missing persons was revealed in complaints which had been considered by the HRAP to date. The HRAP received some 250 related complaints in 2008/9 from relatives of missing persons, primarily Kosovo Serbs who were believed to have been abducted by the Kosovo Liberation Army (KLA). Although the report focusses mainly on the abduction of Kosovo Serbs, Amnesty International's own research led to similar findings with regard to UNMIK's failure to investigate enforced disappearances of Kosovo Albanians by Serb forces.
3. The report noted that the HRAP's initial opinions more than confirmed Amnesty International's findings – that such reports of missing persons were not promptly, impartially and thoroughly investigated by UNMIK police and that relatives were rarely informed of any progress that had been made in those investigations. Indeed in some of the complaints reviewed to date, the HRAP found that no investigations had been conducted at all or else that the investigations were concluded when the remains of the missing persons were returned to their families.
4. The report also noted that UNMIK continued to violate the human rights of complainant family members of the disappeared in its failure to implement the recommendations of the HRAP with respect to reparation.
5. The report also stated that: "The apparent lack of any adequate reaction from UNMIK Police may have suggested to perpetrators that the authorities were either not able to, or not willing to investigate such criminal acts. Such an attitude on the part of the authorities

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<sup>12</sup> <http://www.amnesty.org/en/library/info/EUR70/009/2013/en>.

towards the most grave crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, [...], do not justify such inaction, either at the outset or subsequently”<sup>13</sup>.

6. The report also noted however, that UNMIK’s responsibilities for police and justice came to an end when the European Union Rule of Law Mission in Kosovo (EULEX) took over its policing, prosecutorial and judicial functions on 9 December, 2008. These responsibilities included the investigation and prosecution of serious crimes as well as crimes under international law.
7. In relation to EULEX, the report observed that: “Few of the cases included in this report have been investigated so far by EULEX. Although EULEX police and prosecutors have made some progress in the investigation of cases of the enforced disappearance of Kosovo Albanians by Serb forces, less progress has been made so far in investigations and prosecutions which relate to the abductions of Serbs and other minorities”<sup>14</sup>.
8. In this context, Ms Sian Jones of Amnesty International summarised the situation as follows: “While it is now up to EULEX to open investigations into cases of post war abductions and murder, UNMIK must make sufficient funds available to provide for the relatives of the missing with adequate and effective compensation for moral damages and their pain and suffering, in accordance with international law and standards”<sup>15</sup>.

#### *Recommendations*

9. In the absence of any other effective remedies in Kosovo available to those whose human rights have been violated by UNMIK, Amnesty International urges the UNMIK SRSG:
10. To use the power invested in him by the UN, and the discretion afforded to the office of the SRSG, to ensure that, in accordance with international standards, those who the HRAP considered to have had their rights violated by UNMIK are provided with access to a remedy, including access to justice, and to adequate and effective reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
11. To conclude an agreement with EULEX in order to ensure the fulfilment of the HRAP’s recommendations that EULEX and other competent authorities, including the Special Prosecutor of the Republic of Kosovo should open or continue criminal investigations into cases of missing persons brought before the HRAP, so that those suspected of criminal responsibility are brought to justice in fair trials;
12. To ensure that UNMIK makes sufficient funds available to provide the relatives of the missing persons with adequate and effective compensation or moral damages, when

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<sup>13</sup> This comment appears in several of the HRAP’s Opinions, see for example, Case 312/09, *Momcilo Milenkovic v. UNMIK*, Opinion, adopted 6 June 2013, para 87. Each of the HRAP’s Opinions cited in this report are available at <http://www.unmikonline.org/hrap/Eng/Pages/Cases-by-Date.aspx>

<sup>14</sup> In January 2011, EULEX opened a preliminary investigation into allegations relating to the abduction of Serbs in 1999 and their subsequent transfer to Albania. In June 2011, a Brussels based EULEX Task Force was approved to conduct the investigation and in August 2011 John Clint Williamson was appointed as Lead Prosecutor for the Special Investigative Task Force.

<sup>15</sup> Amnesty International Press Release, 27 August, 2013 at “Amnesty International UK/www.amnesty.org.uk”.

recommended by the HRAP, including in cases of violations of Article 3 of the European Convention on Human Rights, adequate and effective compensation for their pain and suffering;

13. To give the same consideration to all other complaints decided by the HRAP, in which recommendations relating to investigations and reparations, are made by the HRAP to the Office of the SRSG;
14. Amnesty International also urges EULEX police and prosecutors to investigate all outstanding cases of post-war alleged abductions and murders, including those brought before the HRAP, and those transferred by the Special Prosecutor of the Republic of Kosovo (SPRK) to local courts.

### **8.5. Inadmissibility decision of the European Court of Human Rights in *Azemi v. Serbia***

Case no. 11209/09 (decision of 5 November 2013)

1. The case concerned a Kosovo citizen, who successfully challenged the termination of his employment before the Municipal Court of Ferizaj in Kosovo. However, the order of the court to reinstate the applicant was not enforced. The applicant lodged a complaint against Serbia about the non-enforcement of the decision of the Municipal Court. The European Court of Human Rights (ECtHR) found that Serbia's authorities were exercising any effective control in Kosovo since 1999.
2. Therefore, the ECtHR could not "point to any positive obligations that [Serbia] had towards the applicant" and that "[it could] not be held to be responsible under Article 1 of the Convention for the non-enforcement of the decision of the Municipal Court" of which the applicant had complained. The ECtHR concluded that the application was incompatible *ratione personae* and declared it inadmissible.

In the *Azemi* decision the ECtHR acknowledged, for the first time, the existence and jurisdiction of the EU Human Rights Review Panel as follows:

"In its Opinion on the Existing Mechanism to review the compatibility with human rights standards of acts by UNMIK and EULEX in Kosovo (no. 545/2009, CDL-AD (2010) 051), the Venice Commission welcomed the establishment of the UNMIK Human Rights Advisory Panel ("the Panel") and urged the Panel and UNMIK to find a solution so that over 450 cases pending before the Panel might be processed before UNMIK leaves Kosovo.

The Venice Commission also welcomed the establishment of the EULEX Human Rights Review Panel. The Panel was established pursuant to a decision of the European Union of 20 November, 2009 and it became operational on 9 June, 2010. Its mandate is to review alleged human rights violations committed by EULEX in the exercise of its executive mandate. It submits its findings to EULEX and, where necessary, makes recommendations for remedial action."

## 9. The future of EULEX and human rights challenges ahead

The proposed restructuring of EULEX Kosovo which is set to occur in June 2014, raises a number of concerns associated with the effective protection of human rights in Kosovo. At this point in time, the Panel does not know whether EULEX will be restructured or else cease to exist and be replaced by another CSDP Mission. In any case, it can be reasonably assumed that EULEX or, in the alternative, another CSDP Mission with a different name will retain certain executive powers, at least, in regard to the investigation, prosecution and adjudication of certain categories of crimes.

Further, following the implementation of the Dialogue agreement between Pristina and Belgrade it can be anticipated that some executive powers will be maintained in relation to northern Kosovo. In addition, regardless of the exact nature or qualification of the mandate of the future mission ("executive" or otherwise), it is essential that the EU Mission should ensure that its staff should continue to act in accordance with and with a view to promote full respect for relevant human rights standards.

The Panel has identified the following as the most pressing human rights issues to be considered by the EU and EULEX leadership in the context of this process:

- i. Should EULEX should be replaced by another CSDP Mission in Kosovo endowed with executive powers, such a mission would also need to be subjected to an external accountability mechanism to review alleged human rights violations by that mission. Therefore the Human Rights Review Panel would need to form part of the legal framework in a restructured mission. As noted above, even a non-executive or only partial executive mandate should not affect the mission's commitment to and responsibility for ensuring compliance with internationally recognised human rights standards.
- ii. Building on the experience of the Panel, the establishment of a new CSDP Mission would also present the opportunity to enhance the effectiveness of the Human Rights Review Panel, by expanding its authority:
  - a. The independence of the Panel can be significantly strengthened by the creation of an institution separate and independent from the CSDP Mission. Such independence does not only mean operational independence but at the same time administrative autonomy.

A truly independent Panel would have its own budget, inter alia, for outreach campaign purposes. An accountability mechanism that has to request budgetary approval for all planned actions, including public relations, from the institution that it oversees may be seen as dependant on that institution.

While EULEX provides substantial administrative support, the mere fact that the Panel and its Secretariat have to use EULEX vehicles, use EULEX insignia and are under contract to the Head of Mission may lead to a perception of dependence by complainants as well as by the public at large in regard to the Panel's institutional and operational independence.

- b. In the interests of transparency, it is strongly advised that the Panel's founding documents, in particular the accountability concept, be declassified by the relevant European institutions. For instance, the fact that the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human

Rights Review Panel is considered restricted inevitably impacts adversely on the perception of the transparency of the Panel.

- c. The activities of the Panel extend far beyond the review of complaints and the rendering of decisions, as for example its outreach campaign responsibilities. A future Panel would therefore benefit from the services of a dedicated public relations officer with an adequate budget at his/her disposal to address the serious lack of awareness of the Panel among the general population.
- d. Several commentators, including the Council of Europe, have noted as a shortcoming that the recommendations of the Panel are not binding and EULEX is not obliged to act upon them. As a further limitation, it has been noted by commentators that the Panel is not authorized to recommend the payment of compensation by EULEX.

The Panel invites the EU to reconsider these matters in the context of an accountability mechanism for future CSDP Missions. The credibility and effectiveness of the Panel as an accountability mechanism would be greatly enhanced by endowing it with the ability to render binding decisions and recommendations, although maximum amounts could be set for its monetary awards.

- iii. The continued existence of the Panel ought to be ensured in the event that the mission is downsized or restructured, with a mandate to complete the examination of pending cases (Rules of Procedure, Para 25, subparas 2 and 3 refer).

## 10. Concluding remarks

1. As in previous years, the Panel recommends again that the EU and EULEX ought to address the requirements of the Panel to facilitate a substantial expansion of its outreach campaign, in particular, the launch of TV and radio broadcasts.
2. The Panel recommends that the goal of greater awareness of human rights within the overall EULEX mission continues to be actively pursued. In this context, the Panel recommends that the EU and EULEX ensure that the effective protection of human rights in Kosovo is, and remains, a priority in the training of new EULEX staff members.

Such training might also be extended to relevant EULEX divisions and units to ensure a common understanding of EULEX's human rights obligations by EULEX staff. Obviously, EULEX staff members come from various national and professional backgrounds. They have different levels of human rights education and awareness and human rights have had varying levels of importance and relevance in their home states. This could be effectively addressed by ensuring common standards for all staff members of the mission.

3. The Panel recommends EULEX endeavours to put in place all necessary mechanisms within the mission and to allocate sufficient resources to deal promptly and effectively with the Panel's requests for information pertaining to complaints filed before the Panel. To date extensions have been requested in many of the communicated cases, causing delays in the examination of cases.
4. The Panel recommends that the EU and EULEX make respect for human rights a priority of their restructuring strategy and also ensure that all necessary procedures and mechanisms are in place to guarantee and protect these rights once EULEX has completed its mandate. In particular, the Panel recommends that the EU and EULEX take into consideration the need to strengthen, in the institutional sense, an accountability mechanism for a future CSDP Mission in Kosovo.
5. The Panel recommends that the EU and EULEX ensure that the commitment of EU Member States and, consequently, its own commitment to upholding internationally recognized human rights standards applicable in Kosovo should remain real, concrete and effective. The Panel therefore recommends that EULEX Kosovo continue to be fully engaged in the promotion of and respect for human rights throughout the range of the activities undertaken by EULEX.

See [www.hrrp.eu](http://www.hrrp.eu) for further information on the Panel.

**ANNEX 1 Staff table**

<b>Panel</b>	
<b>Magda Mierzewska</b>	Presiding Panel Member
<b>Guénaël Mettraux</b>	Panel Member From 01 October 2012
<b>Katja Dominik</b>	Panel Member, EULEX Judge
<b>Elka Filcheva-Ermenkova</b>	Substitute Panel Member, EULEX Judge

<b>Secretariat</b>	
<b>John J. Ryan</b>	Senior Legal Officer
<b>Joanna Marszalik</b>	Legal Officer
<b>Florian Razesberger</b>	Legal Officer
<b>Shpresa Gosalci</b>	Administrative/Language Assistant (Albanian-English)
<b>Katica Kovacevic</b>	Interpreter/Translator (Serbian-English)
<b>Kushtrim Xhaferi</b>	Interpreter/Translator (Albanian-English)

## ANNEX 2 Schedule of outreach campaign and other activities

Date	Location	Event
22/01/13	North Mitrovica	Meeting with Ms Zlata Radovanovic Coordinator for the Office For Kosovo & Metohija
29/01/13	HRRP Building	Meeting with PILPG; Michael Kovaka (MK) - Chief of Party, Agon Gashi (AG) – Legal Program Officer
21/02/13	Kosovo Ombudsperson Office	Meeting with Mr Sami Kurteshi, the Kosovo Ombudsperson; Deputy Ombudsperson, and the Spokesperson for the Ombudsperson Institution (OIK), Ms Majlindë Sinani-Lulaj.
08/03/13	Ferizaj	Meeting with Mr Samir Reka, the project coordinator
08/03/13	Pec/Peja Monastery	Meeting with Bishop Jovan Culibrk, Bishop of Ulpiana Jovan, Vicar Bishop of the Serbian Patriarch
11/03/13	OSCE Pejë/Peć	Meeting with Director of the OSCE Regional Centre in Pejë/Peć, Mr Norman Spitzegger
11/03/13	NGO ESG Gorazdevac/Goraz hdevc	NGO Experimental Studio Group, Mr Sasa Petrovic
13/03/13	Peace and Human Rights Council Saferworld, Prizren	Meeting with Mr Musa Vezgishi, Executive Director
13/03/13	Basic Court, Prizren	Meeting with Mr Ymer Hoxha
14/03/13	Belgrade	Project: Support to the implementation of strategies for IDPs, refu-gees and returnees
14/03/13	Belgrade	Meeting with Association of Missing Persons (AMP), Massimo Moratti (MM)
25/03/13	Presidency of the Islamic Community, Pristina	Meeting President of the Islamic Community, Kosovo, Mr. Naim Ternava
26/03/13	Office for Kosovo and Metohija	Meeting with Ms Zlata Radovanovic, Coordinator of Office for Kosovo and Metohija, Ms Bratislava Radovanovic, Officer of the Office for Kosovo and Metohija
23/04/13	OSCE HQ, Pristina	Meeting with Cornelius Nolan, Senior Democratization Officer in the RC Pristina
29/04/13	NGO HUMKOS Gracanica	Meeting with Ljubinko Todorovic (LT)- President HUMKOS
29/04/13	Pristina	Meeting Kosovo Law Center (KLC)
08/05/13	Mitrovica	Meeting with Legal Officers from the project: Support to the implementation of strategies for IDPs, refugees and returnees; an officer from the Office for Kosovo and Metohija
14/05/13	Mitrovica	Meeting, Kosovo Policy Action Network, Mr Andreja Mijanovic
21/05/13	Bishops residence, Pristina	Meeting with Don Lush Gjergji, Vicar General of the Roman Catholic Church in Kosovo
23/05/13	HRRP Building	Meeting with Xhevdet Halili, KLC Director, Vittorio di Giacomo, Programme Manager

27/05/13	Peace and Human Rights Council Saferworld, Prizren	Meeting with Mr Musa Vezgishi Executive Director
27/05/13	Association "Loyola - Gymnasium" Prizren	Meeting with the Association "Loyola - Gymnasium", Fr Walter Happel SJ, Executive Director
27/05/13	OSCE office Peja	Inter-agency meeting, international actors in Peja
03/06/13	Mitrovica	Meeting with Mr Aleksandar Stojanovic, Kosovo Policy Action Network
10/06/13	Serbian Orthodox Church, Pristina	Meeting with Fr Stevo Mitric
11/06/13	UNMIK Logbase, Mitrovica	Inter-Agency meeting, international actors in Mitrovica
12/06/13	HRRP Building	Meeting with Adam Juszcak, Justice Liaison Officer, and Celine Ruiz, Policy Officer, CPCC
19/06/13	Osojane (Klina)	Meeting with Fr Milos Vukic
19/06/13	Istog	Meeting with Fr Jovica Vloiskovic
20/06/13	Kamenica	Meeting with Nebojsa Simic, Director, Kosovo Policy Action Network
27/06/13	Gjilane	Meeting with OSCE Head of Office Gjilane
01/07/13	Sirius Hotel, Prishtina	Roundtable discussion on the Prevention of Torture under the auspices of the Ombudsperson of Kosovo
16/07/13	OSCE Prizren	Meeting with Sara Bonotti, Head of Office/Senior Human Rights Officer in the RC Prizren and Meriton Pajaziti Legal System Monitor
17/07/13	Gracanica Church	Meeting with Fr Ilarion, Rector of Draganac Monastery, Gnjilane/Gilan region
23/07/13	HRRP Building Prishtina	Meeting with Anton Nrecaj, Legal Aid Lawyer, Center for Legal Aid and Regional Development, (CLARD) Kosovo
20/08/13	Mitrovica, Kosovo	Meeting with Mr. Oliver Ivanovic, President of Citizen's Initiative "Serbia, Democracy and Justice"
18/10/13	Pristina	Roundtable discussion "Noise Pollution and its impact on Human Rights"
29/10/13	Basic Court Pristina	Meeting with Mr Hamdi Ibrahim, President of the Basic Court, Pristina
30/10/13	Hotel Sirius Pristina	Roundtable Discussion: "Delivering Justice"
04/11/13	NGO offices in Štrpce/Shtërpçë	NGO "Dona" - Snezana Arsic & NGO "Future without fear" Igor Savic
06/11/13	Court of Appeals in Pristina	Meeting with Mr Salih Mekaj, President of the Court of Appeals
13/11/13	Constitutional Court in Pristina	Meeting with Mr Enver Hasani, President of the Constitutional Court
14/11/13	Prosecution Office in Pristina	Meeting with Mr Ismet Kabashi, Chief State Prosecutor
20/11/13	The Appellate Prosecutions Office	Meeting with Mr Aleksander Lumezi, Chief of Appellate Prosecutions Office
21/11/13	Supreme Court in	Meeting with Mr Fejzullah Hasani, President of the Supreme

	Pristina	Court
21/11/13	Hotel Affa in Pristina	Round table "Accomplishment of the Mission of the Ombudsperson Institution"

### ANNEX 3 Statistics 2010 - 2013

The average length of proceedings before the Panel is some 180 days, i.e. six months.

	2010	2011	2012	2013	Total
<b>Registered cases in total</b>	<b>16</b>	<b>28</b>	<b>23</b>	<b>27</b>	<b>94</b>
<b>Finalized cases in total</b>	<b>6</b>	<b>30</b>	<b>12</b>	<b>18</b>	<b>66</b>
Admissible			2*		2
Inadmissible	6	22	10	13	51
Violation	0	2	0	7	9
No violation	0	5	0	0	5
Strike out	0	1	0	0	1

\*Cases not finalized

Statistics	As of 31 December 2012
Pending	28
Admissible	2
Inadmissible	51
Violation	9
No violation	5
Strike out	1
<b>Registered cases in total since June 2010</b>	<b>94</b>

Counterpart in the complaints	
Executive Division	80
Private individuals/enterprises	14
<b>Total</b>	<b>94</b>

#### ANNEX 4 Decisions of the HRRP 2010-2013

	Case	Complainant	Subject matter	Result
1.	2010-01	Djeljalj Kazagic	Alleged failure to act by EULEX Prosecutor, property matter	Violation
2.	2010-02	Sadik Thaqi	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
3.	2010-03	Osman Mehmetaj	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
4.	2010-04	Feti Demolli	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
5.	2010-05	Mursel Hasani	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
6.	2010-06	Latif Fanaj	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
7.	2010-07	Blerim Rudi	Alleged failure of the Financial Intelligence Unit to comply with the order of the Independent Oversight Board to reinstate the complainant.	Violation
8.	2010-08	Delimir Krstic	Alleged failure to act by EULEX police and prosecutor, property matter	Inadmissible
9.	2010-09	Burim Ramadani	Alleged non-functioning of the court system, Kitchina-case	inadmissible
10.	2010-10	Horst Proetel	Unsuccessful candidature for a EULEX position	Inadmissible
11.	2010-11	Laura Rudi	Private financial claim against a EULEX employee	Inadmissible
12.	2010-12	Hunaida Pasuli	Unsuccessful candidature for a EULEX position	Inadmissible
13.	2010-13	An EULEX- Employee	Internal EULEX dispute with regard to performance appraisal and personal relationship with supervisor	Inadmissible
14.	2010-14	Lulzim Gashi	Unsuccessful candidature for a EULEX position	Inadmissible
15.	2010-15	Faton Sefa	Failure to get reinstated to ones previous employment (private sector), alleged failure to implement court rulings	Inadmissible
16.	2010-16	Cyma Agovic	Transferred from EULEX - Failure of the EULEX judges to fairly examine the complainant's case	Inadmissible

	<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
17.	2011-01	Family of Dede Gecaj	Request for investigation of the extradition decision of EULEX Courts in Kosovo in the case of the late Dede Gecaj	Inadmissible
18.	2011-02	Chamalagai Krishna Bahadur	Alleged Failure to Act	Inadmissible
19.	2011-03	Afrim Mustafa	Dispute with regard to closing down a private radio station and confiscation of radio equipment	Inadmissible
20.	2011-04	Besim Berisha	Complaint about living conditions in Dubrava Prison	Strike out
21.	2011-05	SH.P.K "Syri"	Alleged denial of the right to a fair hearing, freedom of expression and equality before the law, SCSC.	Inadmissible
22.	2011-06	Milazim Blakqori	Alleged non-enforcement of a decision, failure to act by EULEX	Inadmissible
23.	2011-07	Case W	Alleged violation of Article 6 ECHR	Violation
24.	2011-08	Anton Rruka	Alleged denial of the right to a fair hearing, freedom of expression and equality before the law, SCSC.	Inadmissible
25.	2011-09	Mirkovic Bojan	Alleged unlawful dismissal from EULEX	Inadmissible
26.	2011-10	Dejan Jovanovic	Alleged undue delay in the proceedings before the SCSC.	Inadmissible
27.	2011-11	Srecko Martinovic	Alleged excessive use of force, inhumane treatment and denial of right to a fair trial	Inadmissible
28.	2011-12	Novica Trajkovic	Alleged excessive use of force	Inadmissible
29.	2011-13	S.M.	Alleged excessive use of force, denial of right to a fair trial and failure to respect the right to private life	Inadmissible
30.	2011-14	Lindita Shabani	Alleged denial of the right to private and family life	Inadmissible
31.	2011-15	Samedin Smajli	Alleged denial of a fair trial and undue delay in proceedings	Inadmissible
32.	2011-16	Avdyl Smajli	Alleged denial of a fair trial and undue delay in proceedings	Inadmissible
33.	2011-17	Faik Azemi	Alleged denial of the right to a fair hearing	Inadmissible
34.	2011-18	Mykereme Hoxha	Alleged failure to act by EULEX Prosecutor	Inadmissible
35.	2011-19	Sefer Sharku	Alleged failure to respect a binding court-decision.	Inadmissible
36.	2011-21	Ventor Maznikolli	Alleged undue delay by EULEX judges in scheduling a Supreme Court hearing.	Inadmissible

	<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
37.	2011-22	Hysni Gashi	Alleged denial of a fair trial and alleged incompetence of EULEX judges.	Inadmissible
38.	2011-23	Hashim Rexhepi	Alleged violations of the right to liberty and the right to a fair trial.	Inadmissible
39.	2011-24	Predrag Lazic	Alleged failure to get a fair hearing in a reasonable time.	Inadmissible
40.	2011-25	Shaip Gashi	Alleged deprivation of German disability pension.	Inadmissible
41.	2011-26	Njazi Asllani	Alleged non-enforcement of a decision, failure to act by EULEX	Inadmissible
42.	2011-28	Case Y	Alleged breach of the right to respect private and family life.	Inadmissible
43.	2012-01	Qamil Hamiti	Alleged denial of the right to a fair hearing	Inadmissible
44.	2012-02	Arben Zeka	Alleged failure to adjudicate property case	Inadmissible
45.	2012-03	Rexhep Dobruna	Alleged denial of the right to a fair hearing.	Inadmissible
46.	2012-04	Izet Maxhera	Property related dispute with EULEX in Mitrovica.	Inadmissible
47.	2012-05	Fatmir Pajaziti	Alleged breach of right to liberty and right to a fair trial.	Inadmissible
48.	2012-06	Case Z	Alleged violations of Articles 10 and 11 UDHR, Articles 5 and 6 ECHR, Article 9 ICCPR and Article 6 CAT	Inadmissible
49.	2012-07	Case I	Alleged failure to act by EULEX Prosecutor and EULEX Police	Inadmissible
50.	2012-08	Case U	Alleged violation of Article 6 ECHR	Inadmissible
51.	2012-09	Case A	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 ECHR	Violation
52.	2012-10	Case B	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 ECHR	Violation
53.	2012-11	Case C	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 ECHR	Violation
54.	2012-12	Case D	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 ECHR	Violation
55.	2012-13	Bejtush Gashi	Alleged violations of Article 6 ECHR and Article 1 of Protocol 1 ECHR	Inadmissible
56.	2012-15	Shefqet Emerllahu	Alleged violation of Article 6 ECHR, failure to investigate	Inadmissible
57.	2012-16	Kristian Kahrs	Alleged violation of Article 6 ECHR, failure to act	Inadmissible
58.	2012-17	Case E	Alleged violations of Articles 5 and 6 of ECHR	Inadmissible

	<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>59.</b>	<b>2012-18</b>	Hamdi Sogojeva	Alleged violation of Article 1 of Protocol 1 of the ECHR	Inadmissible
<b>60.</b>	<b>2012-19</b>	Case H	Alleged confiscation of property	Violation
<b>61.</b>	<b>2012-20</b>	Case G	Alleged violations of Articles 3, 10, 11 ECHR and Article 1 of Protocol 1 ECHR	Violation
<b>62.</b>	<b>2013-01</b>	Case I	Alleged violation of Article 6 ECHR	Inadmissible
<b>63.</b>	<b>2013-02</b>	Arsim Krasniqi	Alleged violation of Article 3 ECHR	Inadmissible
<b>64.</b>	<b>2013-16</b>	Almir Susaj	Alleged violation of Article 3 and 8 ECHR	Inadmissible
<b>65.</b>	<b>2013-19</b>	U	Alleged violation of Article 1 Protocol 1 ECHR	Inadmissible
<b>66.</b>	<b>2013-20</b>	Shaip Gashi	Alleged violations of Article 1 of Protocol 1 ECHR	Inadmissible