

European Union

Human Rights Review Panel Kosovo

Annual Report

1 January to 31 December 2015

Human Rights Review Panel - Secretariat
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Foreword

This is the sixth annual report of the Panel which covers the period from 1 January 2015 to 31 December 2015. During the reporting period the Panel conducted five sessions and carried out a public outreach campaign duty trip to Serbia.

The Panel examined 38 complaints and 15 new complaints were filed with the Panel.

The Panel found violations of human rights in four cases and declared that there had been no violations in ten others. It also declared eight cases admissible without prejudging their merits.

In two cases where violations had been previously found, the Panel rendered follow-up decisions.

In addition, 12 cases were declared inadmissible and one struck off the list.

The Panel continued to develop its own jurisprudence in the review of its cases dealing, *inter alia*, with Articles 2, 3, 6, 8, 13 and Article 1 of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms.

The Panel and its Secretariat also continued with its public outreach campaign. The Secretariat, accompanied by a Panel member, met with the Coordinator of the Office for Kosovo and Metohija, in North Mitovica on 16 June.

The full Panel, accompanied by the Secretariat, met with Head of the Group for Justice, Human Rights and Property Rights, Office for Kosovo and Metohija, the Adviser, Department of Legal Affairs, Office for Kosovo and Metohija and the Head of the Commission for Missing Persons and the Coordinator, Office for Missing Persons, Government of the Republic of Serbia in Belgrade on 7 December.

The Panel also met with the Team Leader and Deputy Team Leader of the implementing agency of the Project for the Further Support to Refugees and Internally Displaced Persons in Serbia, (Europaid/129209/C/SER/RS), an EU funded project, in Belgrade on 7 and 8 December.

The operation of the Panel (including its public outreach campaign) was slowed down for a period of time due to the lack of adequate human resources. The Panel operated with just one legal officer for about four months, two legal officers for approximately three months and with the full complement of three legal officers for just five months of the year.

Despite its best outreach efforts, there is a persistent lack of awareness of the mandate, procedures and operations of the Panel in the mission area. The Panel is determined to address this problem in 2016, with the support of EULEX Kosovo, *inter alia*, with the resumption a TV information campaign which launched initially in 2014.

The Panel and Secretariat continued its periodic meetings with senior EULEX officials. A comprehensive presentation was provided by the Panel and Secretariat to the new Chief of Staff, Mr. John Rouse. In addition, the Panel and Secretariat made a presentation to the Head of EULEX Executive Police and his staff which was followed by an in-depth discussion on the roles and responsibilities of both EULEX and the Panel.

Through its operations and activities, the Panel continues to add value to the wider EULEX Kosovo mandate, *inter alia*, in the provision of meaningful legal remedies and support and assistance to members of the public at large who believe that their human rights have been violated by EULEX Kosovo in the conduct of its executive mandate. The existence and work of the Panel send a clear message of the Mission's commitment to upholding high standards of human rights all through the various aspects of its executive mandate.

On the administrative side, it is my pleasure to welcome our new Legal Officer, Paul Landers who took up his post with the Panel in August. I take this opportunity to wish him every success in his challenging assignment.

Finally, I would like to acknowledge the compliance of the Head of Mission EULEX in the implementation of the recommendations of the Panel where EULEX Kosovo was found to have committed human rights violations (see below – reference to relevant decisions in the text). It is essential to ensuring the effectiveness of the Panel's work that the Head of Mission and its staff should continue to collaborate with a view to continue building a strong sense of accountability and respect for the rule of law within the Mission. I would also like to take this opportunity to record my appreciation in respect of the cooperation that the Panel has received from the Head of Mission and his staff in EULEX HQ.

Magda Mierzevska
Presiding Member
Human Rights Review Panel

1. Introduction

The European Union established the Human Rights Review Panel (hereafter the Panel) on 29 October 2009, with a mandate to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.

The Panel is 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 with an executive function.

Together with the Human Rights Advisory Panel of the United Nations Interim Administration Mission in Kosovo (UNMIK), it is one of only two international panels that hold international organisations, operating in an executive role, accountable for alleged 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 increased relevance within the international community. It may, in due course, come to constitute a necessary component of the work of international organisations and, in particular, in rule of law missions when they exercise some of the executive functions of a State.

During the year, the Panel reviewed 38 complaints and found that EULEX Kosovo committed human rights violations in four instances. In two cases, the violations related to a failure to act by EULEX Kosovo in contravention of Art 13 of the European Convention on Human Rights (the Convention) (right to an effective remedy). In another, the Panel found that the complainant's rights under Article 6 had been violated (Right to a fair trial). The decision in the fourth case found multiple breaches of Articles 2 (Right to life), 3 (Prohibition of torture), 8 (Right to respect for private and family life) and 13 (Right to an effective remedy) of the Convention in relation to inadequate investigations into abductions, disappearances and killings in Kosovo in 1999 and 2000.

In ten cases, the Panel found that there was no violation of the complainants' right under Article 3 of the Convention.

The Panel, acting under Rule 34 and Rule 45 *bis* of its Rules of Procedure, made detailed remedial recommendations to the Head of Mission EULEX Kosovo with regard to the violations it had found and assessed the subsequent response by EULEX Kosovo to its recommendations.

It declared 12 complaints to be inadmissible and struck one off of its list of cases to be examined.

A total of 15 new complaints were filed with the Panel during the reporting period.

The Panel continued with its public outreach campaign with the main effort being focused on NGOs active in the human rights sector, civil society representatives and local authorities and stakeholders at the municipal level. The Secretariat also attended various human rights related seminars, conferences and round table discussions.

Discussions and interactions of the Panel with its interlocutors and non-governmental organisations in the implementation of its public outreach campaign in the mission area raise the profile of EULEX Kosovo and by extension, enhance its reputation and credibility throughout the mission area and further afield.

The engagement of the Panel in these discussions and public outreach campaign activities also demonstrates the determination of the European Union (EU), in a Common Security and Defence Policy (CSDP) type mission, to address the human rights concerns of Kosovo Serb Internally Displaced Persons, who in this instance, are currently displaced in Serbia and elsewhere, in relation to the issues of murdered and missing persons as well as property rights/disputes.

In addition, the endeavours of the Panel in this regard advance and highlight, in a public manner, tangible proof of the commitment of the EU to ensure accountability for alleged breaches of human rights by EULEX Kosovo in the discharge of its executive mandate.

These public outreach campaign activities further enable the Panel to inform the public at large about the availability of a remedy for alleged human rights violations by EULEX Kosovo and raises awareness of human rights amongst the public at large in the mission area.

Most importantly, this interaction by the Panel with concerned persons who are engaged in legal aid programmes etc. in the mission area, facilitates access to justice and provides other support for those whose human rights have allegedly been violated by EULEX Kosovo in the discharge of its executive mandate.

Finally, despite its best efforts in the implementation of its public outreach campaign, with limited human resources, the Panel acknowledges that there is a latent lack of awareness of the mandate, procedures and operations of the Panel in the mission area.

The Panel intends to address this problem in 2016, with the support of EULEX Kosovo, *inter alia*, with the resumption a TV information campaign which was first launched, quite successfully, in 2014.

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.¹ However, pursuant to the Accountability Concept, the Panel has no jurisdiction in respect of Kosovo courts. The fact that EULEX judges sit on the bench of a particular court 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. The Panel amended its rules on 21 November 2011 and 15 January 2013.

2.3. Applicable International Human Rights Instruments

In accordance with the provisions of the Accountability Concept, the Panel may consider complaints pertaining to alleged breaches of, among others, the following human rights instruments:

- The Universal Declaration on Human Rights (1948)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention, 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)

In practice, the complaints filed to date have been primarily based upon the European Convention on Human Rights and its Protocols. A number of them also relied on the provisions of the Declaration on Human Rights, the International Covenants and other human rights instruments.

3. The Panel and the Secretariat

3.1. Panel Members

The Panel consists of four members, including a Presiding Member. One permanent member and the substitute member of the Panel are EULEX judges.

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 LL.M. 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

¹ 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. The Panel is therefore not at liberty to disclose its details.

Court of Human Rights, Strasbourg, France since 1998. She has extensive international training experience in various substantive and procedural human rights issues.

Ms Mierzevska'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. She co-authored, with J. Krzyzanowski, *Według ojca, według córki (According to the father, according to the daughter)*, which obtained a prize for the best historical book published in Poland in 2010.

Members

Prof Dr Guénael Mettraux

Dr Guénaël Mettraux holds a *licence en droit* from the University of Lausanne (Switzerland), an LLM from University College London and a PhD in law from the London School of Economics and Political Science.

He practices law as a 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*.

Dr Katja Dominik

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

Dr 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, Dr 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.

Dr 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 Dr 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 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 2012 she was appointed as an International Judge at the Supreme Court of Kosovo, where from January 2012 till July 2014 she worked exclusively on war related property disputes and since August 2014 she deals with criminal cases related to war crimes, organised crime and other serious crimes. 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.

3.2. The Secretariat

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 to his present post as the Senior Legal Officer and Head of the Panel Secretariat, EU Human Rights Review Panel in April, 2010. His article on the Human Rights Review Panel, EULEX Kosovo was published in the Irish Defence Forces Annual Review, 2015.

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 at the Registry of 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 Paul Landers, an Irish citizen, is a Barrister at Law having graduated from the Honourable Society of King’s Inns, Ireland. He has been called to the Bar of the Republic of Ireland. He also holds a post graduate degree in Human Rights and Criminal Justice from Queen’s University, Belfast, Northern Ireland. He is a former member of the Garda Siochana (Irish Police) having served for 15 years in the Special Detective Unit. Thereafter, he took up the position of Legal and Human Rights Adviser to the Garda Siochana. Mr. Landers previously worked as a lawyer with EULEX Kosovo in the Human Rights and Legal Office. Prior to taking up his current assignment, he was employed with the EU Rule of Law Regional Mission in the Horn of Africa as Head of Policing Pillar with responsibility for Djibouti, Somalia, Somaliland, Puntland, Seychelles and Tanzania. He was appointed as Legal Officer of the Secretariat of the EU Human Rights Review Panel in August, 2015.

Ms Shpresa Gosalci, Kosovo Albanian, a graduate with a Master on Business Marketing and Management from the AAB University, Pristina. 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.

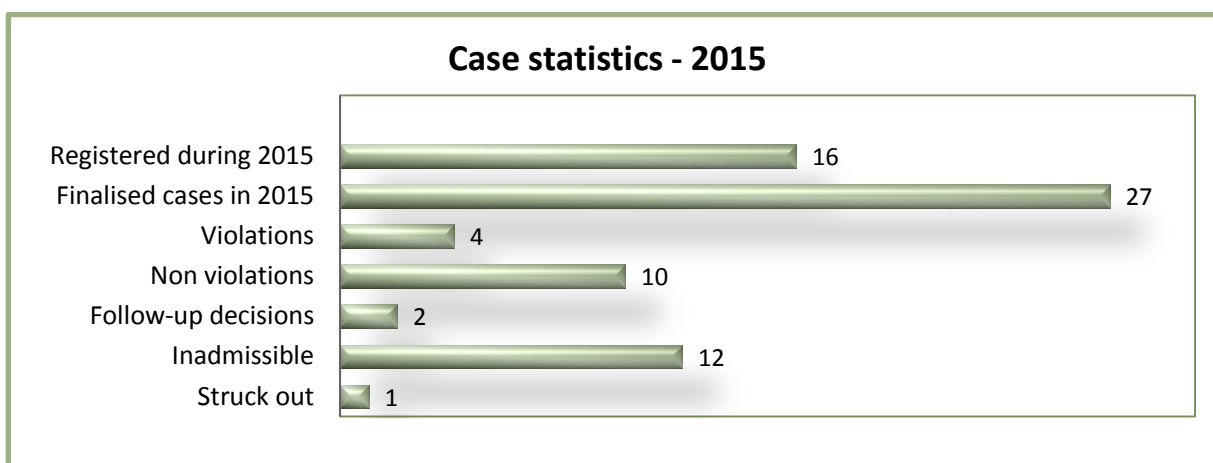
4. Caseload and subject matter of complaints

4.1. Caseload and statistics

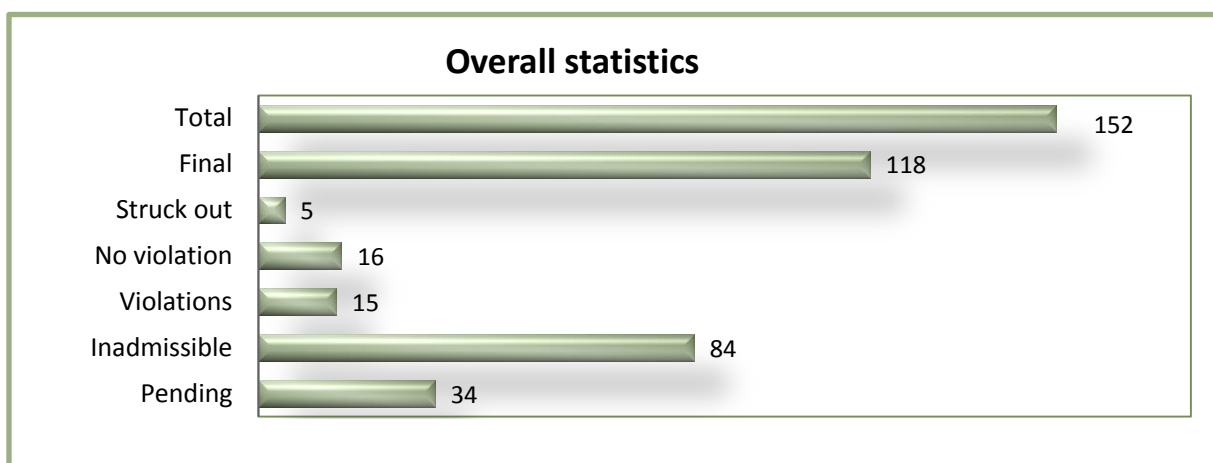
In 2015, the Panel reviewed 38 cases. It communicated one case to the Head of Mission under Rule 30 of its Rules of Procedure, with a request for observations on its admissibility and merits.

The Panel found violations of human rights in four cases and declared that there had been no violations in ten others. It also declared eight cases admissible. The determination of the merits of these cases is pending. In two cases where violations had been previously found, the Panel gave follow-up decisions.

In addition, 12 cases have been declared inadmissible and one struck off the list of cases to be examined.



In 2015, 16 new cases have been registered with the Panel. By the end of 2015, a total of 152 cases have been submitted to the Panel since its inception in 2010, out of which 118 have been closed by a final decision.



4.2. Trends

The majority of alleged violations are said to be the result of an alleged failure or omission on the part of EULEX to act, rather than of its positive actions. Such complaints are related in particular to alleged prosecutorial failure or refusal to institute investigations and/or failure to carry out investigations effectively. A number of cases concerned allegations of unfair or lengthy proceeding before Kosovo courts.

4.3. Subject-matter of complaints

The most common types of alleged human rights violations examined by the Panel in 2015 were as follows:

- Alleged violations of the right to life (Article 2 of the Convention; Article 6 of the International Covenant on Civil and Political Rights): cases of [D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX](#), nos. 2014-11-2014-17; [L.O. against EULEX](#) no. 2014-32; [Sadiku-Sula against EULEX](#) no. 2014-34; [Mustafa-Sadiku against EULEX](#), no. 2014-41;
- Alleged violations of prohibition of torture, inhuman or degrading treatment (Article 3 of the Convention; Article 7 of the International Covenant on Civil and Political Rights; Article 6 paras 1 and 2 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment): cases [Stanisić against EULEX](#), no. 2012-22; *K, L, M, N, O, P, Q, R, S & T (K to T) against EULEX*, nos. 2013-05 to 2013-14; of [D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX](#), nos. 2014-11-2014-17; [L.O. against EULEX](#) no. 2014-32; [Sadiku-Sula against EULEX](#) no. 2014-34; [Mustafa-Sadiku against EULEX](#), no. 2014-41;
- Alleged violations of the right to liberty and security (Article 5, pars 1c, 2, 3 and 4 of the Convention; Article 9, pars 2 to 4 of the International Covenant on Civil and Political Rights): cases *K, L, M, N, O, P, Q, R, S & T (K to T) against EULEX*, nos. 2013-05 to 2013-14; [Krasniqi against EULEX](#), no. 2014-33;
- Alleged violations of the right to a fair trial and access to court (Article 6 of the Convention; Article 14 of the International Covenant on Civil and Political Rights): cases [X and 115 other complainants against EULEX](#), no. 2011-20; [Radunović against EULEX](#) no. 2014-02; [Ibrahimi against EULEX](#) no. 2014-05; [Maksutaj against EULEX](#) no. 2014-18; [J.Q. against EULEX](#) no. 2014-24; [Kaciu against EULEX](#) no. 2014-26; [Sabani against EULEX](#) no. 2014-30; [K.P. against EULEX](#) no. 2014-31; [Mikić against EULEX](#) no. 2014-38; [Hajdari against EULEX](#) no. 2014-40;
- Alleged violations of the right to respect for private and family life (Article 8 of the Convention; Article 17 of the International Covenant on Civil and Political Rights): cases [Stanisić against EULEX](#), no. 2012-22; [D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX](#), nos. 2014-11-2014-17; [L.O. against EULEX](#) no. 2014-32; [Sadiku-Sula against EULEX](#) no. 2014-34;
- Alleged violations of the right to freedom of thought, conscience and religion (Article 9 of the Convention; Article 18 of the International Covenant on Civil and Political Rights): cases *K, L, M, N, O, P, Q, R, S & T (K to T) against EULEX*, nos. 2013-05 to 2013-14;
- Alleged violations of the right to an effective remedy (Article 13 of the Convention) in conjunction with

- Article 6: [*X and 115 other complainants against EULEX*](#), no. 2011-20; [*Radunović against EULEX*](#), no. 2014-02; [*Ibrahimi against EULEX*](#) no. 2014-05
- Article 8: [*Stanisić against EULEX*](#), no. 2012-22; [*D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*](#), nos. 2014-11-2014-17; [*L.O. against EULEX*](#) no. 2014-32; [*Sadiku-Sula against EULEX*](#) no. 2014-34;
- Alleged violations of the right to equal treatment (Article 14 of the Convention; Article 26 of the International Covenant on Civil and Political Rights): [*Stanisić against EULEX*](#), no. 2012-22; [*K, L, M, N, O, P, Q, R, S & T \(K to T\) against EULEX*](#), nos. 2013-05 to 2013-14; [*Radunović against EULEX*](#) no. 2014-02; [*Ibrahimi against EULEX*](#) no. 2014-05;
- Alleged violations of the right to the peaceful enjoyment of one's possessions (Article 1 of Protocol No. 1 to the Convention): [*Begolli against EULEX*](#) no. 2014-27; [*Musa against EULEX*](#), no. 2014-29; [*Zherka against EULEX*](#) no. 2014-42.

A number of complainants referred, in a general manner, to several other international human rights instruments, in particular the Universal Declaration of Human Rights or the International Covenant on Economic, Social and Cultural Rights.

5. Jurisprudence

5.1. Merits

5.1.1. [*X and 115 other complainants against EULEX*](#)

On 22 April 2015, the Panel decided that EULEX Kosovo had violated Article 13 of the Convention, i.e. the right to an effective remedy in case no. 2011-20, *X and 115 other complainants against EULEX*. It found furthermore that it was not necessary to examine the case under Article 6 of the Convention (a right to a fair trial).

The case was brought by 116 Internally Displaced Persons (IDPs) of Roma ethnicity who had been displaced during the 1999 conflict and re-located in a number of UNMIK administered IDP camps. The complainants alleged that a number of their human rights were violated during or as a consequence of their stay in those camps. In particular, they claimed that they were exposed to serious health hazards in these camps. Previously, they had filed a complaint concerning living conditions and health problems in the camps before the UNMIK's Human Rights Advisory Panel (HRAP). Their case, initially declared inadmissible was reopened and is currently pending before the HRAP.

In its decision on admissibility of the case (taken on 5 October 2012), the Panel found the complaint to be inadmissible in relation to the allegations of mistreatment and inadequate living conditions in IDP camps. The complainants submitted that EULEX knew about the dangerous living conditions but had failed to take any action to relocate the Roma from the camps or to provide them with medical treatment. The Panel observed that EULEX had never been in charge of the IDP camps in Kosovo, as, UNMIK had handed over the responsibility for the remaining camps under its authority to Kosovo authorities in 2008. However, without prejudging the merits of the complaint, the Panel declared admissible the complaint regarding the alleged failure of EULEX to ensure that

the complainants had access to justice with a view to seek an effective remedy for an alleged breach of their rights.

In its subsequent decision of 22 April 2015 on the merits of the case, the Panel considered that EULEX's failure to initiate a timely and effective investigation into alleged violations of the complainants' rights compromised their ability to obtain an effective remedy. The Panel observed that under Article 1. A (1) of the Law No. 04/L-273 on amending and supplementing the laws related to the mandate of the European Union Rule of Law Mission in the Republic in Kosovo, the Mission retained jurisdiction in respect of "ongoing" cases within the meaning of this provision. A case was to be regarded as ongoing if a decision to initiate investigation had been filed by the EULEX prosecutors prior to 15 April 2014. Under that law, the date on which the victims filed a report with the competent authorities was therefore immaterial to determining for the purpose of that law whether a case was ongoing. The party had no control or influence over when a decision to initiate investigation would be given. Hence, despite the fact that the complainants in the present matter brought their case to the attention of the authorities in November 2013, they could not exert any influence on their case being regarded as "ongoing" and, as such, retained by EULEX. The Panel noted further that, had the prosecutor's decision to initiate the investigation (which was taken on 15 April 2014) been given merely one day earlier, the case would have fallen within the ambit of the notion of "ongoing" cases and EULEX would have retained jurisdiction over it. EULEX failed to provide a credible explanation for its decision not to act prior to that cut-off date and provided no reason that would have prevented it from doing so.

The Panel observed also that under Article 7 (A) of the Law No. 04/L-273 it was possible for EULEX prosecution to take over cases if it was warranted by "exceptional circumstances". In the Panel's view, EULEX failed to explain why, in light of all relevant circumstances the EULEX Prosecutors did not do that, especially since the case had not been properly investigated up to that point and a failure to act would likely result in depriving victims of access to an effective remedy. The Panel stressed that the case related, inter alia, to one of the most important of all fundamental human rights, the right to life. It had given rise to a number of proceedings in which residents of the camps sought relief and compensation from various bodies and organisations, all to no avail. There was also a clear ethnic element inherent to the case in that the residents were Roma. All these circumstances warranted considering whether the exceptional circumstances within the meaning of Article 7 (A) occurred and whether the case should not have been retained by EULEX prosecution. Although EULEX prosecuting authorities have a discretionary power to take over cases they consider exceptional, that discretion cannot be exercised arbitrarily. It must be exercised diligently in light of all relevant circumstances and in a manner that is consistent with the effective protection of human rights which, in the Panel's opinion, was not demonstrated in the present case.

The Panel concluded that the decision of the Mission not to open an investigation until after the cut-off date of 14 April 2015 negatively affected the complainants' ability to seek and obtain an effective relief for the harm done to them. Although the absence of criminal investigation or of a final judgment in a criminal case does not make it impossible in law to seek civil liability before civil courts against persons in respect of whom Kosovo civil courts have jurisdiction, it seriously undermined the ability of the complainants to seek compensation through civil liability.

The Panel also made recommendations to the Head of Mission for remedial measures. It recommended that the HoM should instruct competent EULEX officials to make enquiries with Kosovo authorities whether an investigation into the alleged violations of the complainants' rights was ongoing. Further, it was recommended that the HoM should instruct EULEX Prosecutors to

consider whether to take over the responsibility of this case, taking into account, in particular, the need for the Mission to guarantee the effective protection of the complainants' rights.

Follow up decision on the Panel's recommendations

In its follow-up decision of 11 November 2015, the Panel found that the Head of Mission had implemented its recommendations in part only. The Panel acknowledged that the HoM implemented the Panel's recommendation to enquire with the local authorities whether the investigation in the case was ongoing. However, it had not been shown to the Panel's satisfaction that there has been real progress in the investigation. Furthermore, it noted that the Chief State Prosecutor of Kosovo and the Chief EULEX Prosecutor decided not to assign the case to a EULEX Prosecutor. The Panel considered that the steps taken by the Mission were insufficient and that the right of the complainants to an effective remedy continued to be adversely affected in the absence of an effective investigation. The Panel declared that it would continue its examination of this case within the framework of the follow-up procedure and invited the HoM to update it on the progress of the investigation by 28 February 2016.

5.1.2. *Desanka and Zoran Stanisić against EULEX*

In that case the Panel examined alleged violations of human rights in relation to Articles 3 (prohibition of torture, inhuman or degrading treatment), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention on the Protection of Human Rights and Fundamental Freedoms ("the Convention").

The complaints related to certain investigations into criminal offences allegedly committed against the complainants. In all cases, EULEX Prosecutors in charge of investigations dismissed criminal reports lodged by the complainants on the basis that there had been "no reasonable suspicion that a specific person has committed the indicated criminal offence". The complainants received, via email, formal notices of dismissal of their complaints and were informed of their right to further pursue the case as "private prosecutors".

With regard to alleged violations of Article 3 of the Convention, the Panel was not persuaded that the complainants showed that, through its actions or omission, EULEX subjected them to any treatment such as would come within the scope of that provision and found that complaint manifestly ill-founded.

Examining alleged violations of Article 8 of the Convention, the Panel reiterated that the notion of "private life" is a broad one and not susceptible to exhaustive definition; it may, depending on the circumstances, cover the moral and physical integrity of the person, protect a person's home and certain professional or business activities or premises. The failure of the authorities to safeguard a person's physical or moral integrity or to prevent attacks on their home and property can raise issues under Article 8 of the Convention in the context of their positive obligations. Nevertheless, the Panel noted that, whilst the complainants' Article 8 rights might have been violated by third parties, it had not been shown how EULEX's actions or omission would have participated in such a violation. The Panel concluded that the facts of the case do not disclose a breach by EULEX of Article 8 of the Convention.

The Panel then considered alleged violations of Article 13 the Convention. It stressed that the existence of an actual breach of another substantive provision of the Convention is not a prerequisite for the application of this Article, provided that their grievances under these provisions can be regarded as "arguable". The remedy required by Article 13 must be "effective" in

practice as well as in law. Article 13 may not always require that the authorities undertake investigation of an alleged failure by the authorities to protect persons from the acts of others. Nevertheless, where such a remedy exists, it must be effective, that is, capable of providing redress and offer reasonable prospects of success.

The Panel noted that EULEX carried out an investigation into each allegation brought by the complainants and duly took various actions. To that extent, the Panel concluded, the Mission could not be said to have neglected to investigate altogether a particular aspect of the case. Moreover, it had found no indication that the complainants were discriminated against because of their ethnic background.

The Panel was concerned, however, by shortcomings in the investigative process: the apparent absence of involvement of the complainants therein and the absence of a reasoned explanation for the termination of proceedings in these cases. It reiterated that victims were, in principle, entitled to be sufficiently involved in and informed of the investigation, subject to considerations of confidentiality and security. Both the involvement of victims in the investigative process and the need for a reasoned explanation of the termination were intended to create a sufficient degree of public scrutiny and accountability, as well as a sense among victims that they have been treated fairly and that their search for justice has been diligently and effectively pursued. Furthermore, a lack of reasoned explanation or inadequate reasons given for the conclusion or termination of an investigation may be incompatible with the effective protection of rights; in particular a victim's right to an effective remedy. Consequently, the Panel concluded that in the circumstances of the case there had been a violation of the complainants' rights guaranteed by Article 13 of the Convention. The Panel considered further that it was not necessary to examine the complaint under Article 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

The Panel made a recommendation for remedial measures to be adopted by the Head of Mission to address the violation.

5.1.3. *K, L, M, N, O, P, Q, R, S & T (K to T) against EULEX*

The Panel examined cases lodged by ten complainants of Serb ethnicity, who had been arrested and allegedly beaten by the Kosovo Police officers while attending Christmas celebrations in Gračanica/Gračanicë Monastery in 2013. The complainants submitted that EULEX had failed to protect them from an arbitrary arrest and ill-treatment at the hands of Kosovo Police and thus violated Articles 3 (prohibition of torture, inhuman or degrading treatment), 5 (a right on freedom and security), 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of ECHR.

The Panel first reiterated the findings made in the "Vidovdan cases"² that the fact that the police operations on that day were led by and fell within the primary responsibility of Kosovo Police did not exclude EULEX's responsibility for its own actions or failures insofar as they were related to the exercise of the executive mandate of EULEX. In such circumstances, the Panel would consider whether any shortcomings attributable to EULEX, including its failure to act, could have violated or contributed to a violation of the complainants' rights.

² *A,B,C,D against EULEX*, 2012-09 to 2012-12, 10 April 2013

Considering the admissibility of the complaint under Article 5 of the Convention, the Panel found that it had not been established that the complainants' detention was unlawful and unjustified. Consequently, the Panel found that complaint manifestly ill-founded.

The Panel then examined the complaint under Article 3. It noted that EULEX police officers involved in the events were acting in an advisory capacity and exercising monitoring, mentoring and advisory (MMA) responsibilities. There is, however, a positive obligation under the Council Joint Action, for EULEX officers to act when they are faced with a threat of any imminent and serious violation of individual rights. Such an obligation is not affected by the capacity in which EULEX police officers are acting alongside or in co-operation with Kosovo authorities. The nature of the response should, in all cases, be appropriate to the circumstances and, in turn, depend on what rights were at stake and on the seriousness of the threats posed to those rights. Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.

The Panel observed that the EULEX police officers were not present during the incidents and learned about them only later. They did not witness the moment of the complainants' arrest, but later interviewed the complainants who, at the time of EULEX visit at the detention centre, appeared to be in good health and did not complain about any mistreatment. The Panel concluded that the complainants had failed to point to any moment when it could be said that the EULEX officers knew or ought to have known that their wellbeing was in danger. Moreover, in contrast to the "Vidovdan cases", it had not been shown that it was the inadequacy of resources allocated by EULEX to monitor the events of the Christmas day that had contributed to the alleged violations of the complainants' rights.

The Panel concluded that EULEX police did all that could possibly be expected of them in the circumstances. Moreover, investigative steps were taken in order to address alleged violations listed in the complaints; a joint investigation by KP and EULEX under the supervision of a EULEX prosecutor was launched and the alleged perpetrators were ultimately indicted. Therefore, the situation complained of did not amount to a violation of Article 3 of the Convention attributable to EULEX.

Having regard to the findings under Article 3, the Panel considered it unnecessary to examine the complaint under Articles 9 and Article 14 of the Convention separately.

5.1.4. *Fitim Maksutaj against EULEX*

On 12 November 2015, the Panel found that EULEX Kosovo violated Article 6(1) of the Convention, i.e. right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in case no. 2014-18, *Maksutaj against EULEX*.

The complainant alleged that the criminal investigation against him had commenced on 11 October 2006 and had not been finalised by the time of his complaint being submitted to the Panel (19 March 2014). He alleged that as a result of this on-going investigation he had been suspended by his employer and had been unable to obtain employment throughout that time. The Panel found that the proceedings conducted by the EULEX Prosecutor were not conducted with the necessary diligence and expeditiousness.

The Panel addressed the issue of the reasonableness of the length of time taken to examine this case and limited its considerations to the period of time when EULEX was responsible for the

investigation of the case (from January 2009 to December 2014). The initial investigation had been instigated by UNMIK on 11 October 2006 and was handed over to EULEX in January 2009. However, the Panel concluded that the overall duration of the process against the complainant and, in particular, the degree of advancement of the investigation when EULEX took it over, was relevant in evaluating the urgency with which the Mission acted in resolving this case.

In addressing the issue of the reasonableness of the length of the proceedings, the Panel examined the particular circumstances of the case and considered a number of specific relevant factors, namely, the complexity of the case, the conduct of the applicant and the conduct of the competent administration. The Panel identified a prolonged period between March 2010 and March 2013 in which there were no apparent attempts by the EULEX Prosecutor to advance and finalise the case. In addition, the Panel considered particular failings of the Prosecutor during the case. The Panel concluded that these shortcomings in the investigation had a negative impact on its overall length and contributed to a denial of the right of the complainant to a speedy resolution of the case against him.

The Panel also examined consequences of these shortcomings for the accused and applied the approach of the European Court of Human Rights to cases where the authorities are required to apply particular expedition to the resolution of cases based on prejudicial impact for the complainant, including employment opportunities. In particular, the Panel noted that "... despite the EULEX Prosecutor being put on notice of the complainant's difficulty *vis a vis* his unemployment, no response was provided to the complainant to his request for clarification and resolution of the matter".

The Panel concluded that, in the particular circumstances of this case, where the proceedings lasted from January 2009 until 15 December 2014, they "were not conducted with the necessary level of diligence and expeditiousness". The Panel found that "the case was left untouched for a long period of time and the complainant was left in the dark as to the status of his case despite repeated requests for clarification. These unjustified delays resulted in a violation of the complainant's right to a fair and public hearing within a reasonable time under Article 6 (1) of the Convention".

The Panel made recommendations for remedial measures to be adopted by the Head of Mission to address the violation including the taking of all necessary measures to conduct an examination of what steps could be taken by the Office of the Chief EULEX Prosecutor (OCEP) to ensure that cases under the authority of that Office are dealt with in accordance with the provisions of Article 6(1) of the Convention and that an effective review mechanism is put in place to ensure that all such cases are dealt with within a reasonable time.

5.1.5. [L.O. against EULEX](#)

Case *L.O. against EULEX* (no. 2014-32) was lodged by the wife of a person missing since 1999. His disappearance was investigated initially by the Special Prosecution Office of the Republic of Kosovo (SPRK). EULEX Prosecutors continued the investigation and it was subsequently taken over by the Special Investigative Task Force (SITF). The complainant submitted that EULEX had failed to conduct an effective investigation into her husband's disappearance, in breach of Article 2 of the Convention, which provides for an obligation to investigate cases of suspicious deaths. His unknown fate caused the complainant emotional suffering.

The Panel declared that EULEX infringed the complainant's rights under Article 2 (an obligation to investigate cases of suspicious deaths), Article 3 (with regard to suffering the unknown fate of her relative), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) of the Convention.

The Panel reiterated that the EULEX mission is not a State and that its ability to guarantee the effective protection of human rights cannot be compared to what may be expected of a State. It also acknowledged the difficulties involved in the investigation of crimes in a post-conflict society such as Kosovo but held that those difficulties should not justify all investigative shortcomings. In every case, the investigative authorities are expected to act with reasonable diligence and promptness and to invest the resources necessary to resolve the case. The Panel underlined that investigating the fate of the disappeared must be and must remain an operational priority for EULEX as a Rule of Law Mission. The Panel found that it had jurisdiction *ratione temporis* over this case as there existed a "genuine connection" between the alleged violations of the complainant's rights and the Panel's jurisdiction.

The Panel considered the complaint in relation to two separate phases: prior to and after the SITF had informed the Mission that it would investigate the case.

Concerning the first period, the Panel noted that the HoM's submissions did not include enough information for the Panel to be able to verify the nature and extent of investigative efforts of EULEX. The Panel, therefore, had to draw the necessary inferences from the absence of such information, especially given the seriousness of the alleged violation. There was no indication that witness statements had been taken by the EULEX Prosecutors, that any credible forensic investigation had been conducted by the Mission or what lines of investigation had been pursued in this case. There was, apparently, only one direct verbal contact between the complainant and the Mission. In the Panel's opinion, this was not enough to guarantee the procedural protection guaranteed by Articles 2 and 3 of the Convention and negatively affected the complainant's enjoyment of her rights under Article 8 and 13.

The Panel noted, furthermore, that the Mission's response to the complainant's efforts to find out what progress was being made in the investigation appeared inadequate; she only received the minimum amount of information and only after she pressed for answers. The Panel underlined the importance that investigative authorities should attach to the manner in which they communicate with victims of rights violations or their close relatives.

The Panel noted, finally, that EULEX's competence and responsibility to investigate crimes falling within its mandate were not conditioned by the actions of an injured party. In a case such as the present one, EULEX was responsible to act *proprio motu* with a view to ensuring that the disappearance was diligently, promptly and effectively investigated.

On that basis, the Panel found, that EULEX's investigative efforts were insufficient and inadequate to guarantee the effective protection of the complainant's rights under Articles 2, 3 (procedural limbs), 8 and 13.

Next, the Panel considered the situation after the SITF had notified the Mission that it was investigating this case. The Panel was critical of the lack of transparency and clarity of the legal basis under which the SITF was operating and its status within EULEX Kosovo, in particular, whether they answer to the Head of Mission. It noted that this lack of clarity and transparency made any review of its activities by the Panel almost impossible. The Panel was of a view that, whilst the involvement of the SITF might ultimately assist the complainant's search for justice, it had not, so

far, demonstrably contributed to securing effective protection for her rights. Without clearer and more detailed information about the SITF's actions and contribution to investigating this case, the Panel had little alternative but to draw the necessary inference that the complainant's rights have been and continue to be violated.

The Panel noted that victims of serious human rights violations, their close relatives and the general public are entitled, in principle, to being sufficiently informed of the progress of an investigation. It accepted the HoM's argument that, to protect the integrity of ongoing investigation, there was a need to guarantee a sufficient level of confidentiality, in particular in cases where the protection of witnesses and informants was paramount. However, the Panel came to the view that the Mission failed to provide enough information to the complainant regarding the investigation and in a manner and with the timeliness necessary and appropriate to the case. No reasons were given why the relatives could not have been regularly informed, in general terms, of what efforts were being made and how far the matters had progressed.

The Panel made a number of recommendations for remedial measures to be adopted by the Head of Mission to address the violations.

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. Murdered and missing persons cases

In 2015, the Panel examined eight cases relating to the fate of persons who had been murdered or gone missing since 1999 and 2000 ([*D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*](#), no's 2014-11 to 2014-17 and case [*Sadiku-Sula against EULEX*](#), no. 2014-34). The complaints were lodged by family members of the missing, who submitted that EULEX failed to carry out investigations into the deaths and disappearances of their relatives.

Considering the admissibility of the complaints, the Panel rejected the Head of Mission's submissions that the Panel lacked jurisdiction *ratione materiae* over some of the cases on the basis that these cases had never been within the competence of EULEX Prosecutors and that no act or failure that contributed to the violation of the complainant's rights could be imputed to the Mission. The Panel found that there was a sufficient legal basis giving EULEX Prosecutors competence over the cases which demanded an investigation of these cases.

It noted that the Law on Jurisdiction provided for exclusive competence of EULEX Prosecutors to investigate and prosecute, among others, war crimes and crimes against humanity, as well as and shared competence over cases which could not be considered war crimes but which would fall under regular chapters of the Criminal Code. The Mission's obligation to investigate these cases arose also from Articles 2 and 3 of the Convention. The Panel rejected the Head of Mission's argument that the EULEX Prosecutors never became competent to investigate these cases where the case files did not formally reach them. It found that it was the responsibility of the Mission to ensure that it organises its records and their transfer in such a way as to guarantee the effective protection of human rights. Moreover, the Mission had been duly informed by the complainants of the existence of their cases and it was its responsibility to investigate them when they were brought to its attention.

Regarding its competence *ratione temporis*, The Panel noted that complaints pertained not to the actual killings but to alleged failure to investigate their cases, that is to the procedural, as opposed to substantive, limbs of Articles 2 and 3. Moreover, the complainants never desisted from pursuing their claims before various authorities (including UNMIK and various branches of EULEX). Even if no investigations were currently pending and the competence of EULEX Prosecutors to investigate might have been limited under the amended Law on Jurisdiction, EULEX had been involved in the investigations of these matters. It was therefore obliged to ensure that they were diligent and timely. Consequently, the Panel found itself competent to examine all the cases as there was a “genuine connection” between the alleged violations of the complainants’ rights and the Panel’s jurisdiction.

The Panel also found that the complaints fell within the ambit of its jurisdiction as they concerned the actions of the EULEX prosecutors. The Panel had already repeatedly held that it had jurisdiction to examine actions of EULEX prosecutors as they constituted the core of the Mission’s executive mandate (for more details, see point 5.2.3. below).

5.2.2. The Panel’s competence to review proceedings before Kosovo Courts

In a number of decisions (e.g. [Kaciu against EULEX](#), no. 2014-26; [Krasniqi against EULEX](#), no. 2014-33; [J.Q. against EULEX](#), no. 2014-24), the Panel reiterated its established 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 principle in respect of the work of Kosovo courts. The fact that EULEX judges sit on the bench does not modify the character of these courts as Kosovo courts.

5.2.3. The Panel’s competence to examine actions of EULEX Prosecutors and police

The Panel reiterated 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, in principle, within the ambit of the Panel’s mandate. Actions or omissions by EULEX prosecutors during the investigative phase of criminal proceedings were not to be considered as forming part of “judicial proceedings” for the purpose of determining the Panel’s competence. Their actions can, therefore, be subject to the reviewing authority of the Panel where human rights violations are alleged to have occurred (see, for instance, cases [Stanisić against EULEX](#), no. 2012-22; [D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX](#), nos 2014-11 to 2014-17 and case [Sadiku-Sula against EULEX](#), no. 2014-34).

The same principle applies to the actions of EULEX police. The mere fact that the police operations are led by and fall within the primary responsibility of Kosovo Police does not exclude the fact that EULEX may be held responsible for its own actions or failures in so far as they impact on the exercise on the executive mandate of EULEX (cases [K, L, M, N, O, P, Q, R, S & T \(K to T\) against EULEX](#), nos. 2013-05 to 2013-14)

Furthermore, the Panel noted that it could not be excluded that it might be competent to evaluate the actions of EULEX prosecutors in criminal investigations even if these are subject to judicial review if they raise issues of human rights and if these have not been fully addressed by the competent judicial authorities (cases [K, L, M, N, O, P, Q, R, S & T \(K to T\) against EULEX](#)).

5.3. Follow up decisions

Apart from the decision in *X and 115 other complainants against EULEX*, case discussed above, the Panel rendered one more follow-up decision.

In the case *Goran Becić against EULEX*, the Panel examined alleged violations of human rights in relation to Articles 13 (a right to an effective remedy) and 14 (freedom from discrimination) of the Convention, as well as Article 1 of Protocol 1 of the Convention (a right to peaceful enjoyment of one's possessions).

The complainant owned a flat in Pristina and, despite a final judicial decision confirming his ownership of the flat, he did not regain its possession. The complainant filed criminal charges against some of the illegal occupiers with the Municipal Public Prosecution Office in Pristina. He also informed EULEX via e-mail about his case and was subsequently informed that his complaint was forwarded to a number of units within the EULEX Mission. However, his complaint was not registered by EULEX. It took two years and nine months after the first contact of the complainant with EULEX for EULEX prosecutors to be made aware of the case.

On 1 July 2014, the Panel declared the complaint admissible and found that it raised serious issues of fact and law pertaining to alleged violations of Articles 13, 14 and Article 1 of Protocol 1 of the Convention. On 12 November 2014, it rendered its decision on the merits of the case and found that EULEX Kosovo had violated the complainant's right to an effective remedy guaranteed under Article 13 of the Convention. The Panel found that it should be expected that arguable claims brought forward to EULEX were properly registered and recorded by the Mission and that they should reach competent EULEX prosecutors in a timely fashion. EULEX had failed to put in place a reliable system of recording and registration of complaints involving allegations of violations of rights which resulted in the case of the complainant remaining dormant for an inordinately long period. The Panel made recommendations for remedial measures to the Head of Mission. It invited him to ensure that the registration and initial assessment of complaints to EULEX in so far as they relate to the Mission's executive mandate, are assessed by staff with legal and human rights expertise and consequently communicated to relevant units.

In the [follow-up decision](#) of 11 November 2015, the Panel concluded that the Head of Mission had implemented its recommendations and closed its examination of the complaint.

6. Activities of the Panel

6.1. Public Outreach Campaign 2015

The Panel continued to engage in the conduct of an extensive outreach campaign to inform the public at large about the Panel. The outreach campaign is conducted in accordance with the Accountability Concept Document of 29 October, 2009 which states, *inter alia*, at Para E, that, "...EULEX Kosovo will ensure a proper dissemination of public information on the Panel and its work..."

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

As stated in previous Annual Reports, there continues to be a general lack of awareness and knowledge of the Panel, its mandate and operations throughout the general population. This is more acute in many rural areas. In this context, the Panel and the Secretariat focused efforts on conducting more outreach activities in those areas identified. The continuation of previous TV and radio advertisement campaigns conducted by the Panel would greatly assist the Panel in its efforts to reach out to the broader urban and rural population.

The main thrust of the outreach campaign during the year was a focus on NGO's, civil society representatives as well as Church and other religious bodies. As part of this strategy, the Panel and Secretariat increased its focus on North Mitrovica in an effort to broaden its visibility in that area.

The Secretariat, accompanied by a Panel Member, met with the Coordinator of the Office for Kosovo and Metohija, North Mitrovica on 16 June. The Coordinator was briefed on the recent activities of the Panel on matters of mutual interest and concern.

In addition, the Panel and Secretariat also undertook a public outreach campaign duty trip to Belgrade from 6 to 8 December where it met with the Head of the Group for Justice, Human Rights and Property Rights, Office for Kosovo and Metohija, the Adviser, Department of Legal Affairs, Office for Kosovo and Metohija and the Head of the Commission for Missing Persons and the Coordinator, Office for Missing Persons, Government of the Republic of Serbia.

The Panel also met with the Team Leader and Deputy Team Leader of the implementing agency of the Project for the Further Support to Refugees and Internally Displaced Persons in Serbia, (Europaid/129209/C/SER/RS) an EU funded project. The last Europaid/129209/C/SER/RS project expired at the end of 2015 and the new project is due to resume for a further two-year term in April 2016.

The Panel conducted a meeting with the Head of the Executive Police and the Command of EULEX CIVPOL on 21 May. In addition, an introductory meeting with the incoming Chief of Staff EULEX Kosovo was held on 12 November.

6.2. Induction training for EULEX staff

The Secretariat continued its participation 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 process is useful to brief future staff members on the mandate of the Panel, to further underline the importance of human rights compliance for the Mission and to raise the profile of the Panel with EULEX staff members in the mission area.

The Panel considers this to be an important element of its outreach and gives it an opportunity to ensure that all new staff are aware of their obligation to comply with relevant human rights standards in the performance of their functions and on the accountability implications for possible breaches of human rights in the exercise of their executive functions.

6.3. HRRP online

The Secretariat maintains the Panel website www.hrrp.eu. The site contains information on the mandate and functions of the Panel, as well as regularly updated information on Panel's activities, sessions and the current status of pending and finalised cases.

All decisions made by the Panel are also available. The table of the Panel's jurisprudence provides access to the Panel's growing case-law by subject matter (both on admissibility and substance) and was created to provide ready and user-friendly access to the case law of the Panel for complainants and lawyers alike.

The website also provides information on applicable human rights standards as well as Application Forms and instructions for filing complaints.

The entire content is available in the English, Albanian and Serbian languages.

In 2015 the Panel website was visited nearly 9000 times by over 7000 users.

Since 2014, the Panel also has a Facebook profile.

7. Operational and Administrative Matters

7.1. Budget

In 2015, as in the previous years, a separate budget for an outreach campaign and promotional materials was allocated to the Panel. This is a welcome step which enables the Panel to make its own decisions on the expansion of the outreach campaign, in particular, the TV and/or radio broadcasts, without recourse to the discretionary resources of EULEX Kosovo.

Nonetheless, additional budgetary discretion would greatly assist the Panel in its day to day operations. This would also further enhance the actual and perceived independence of the Panel and thereby further enhance the credibility of EULEX mission and its human rights commitment.

7.2. Staffing of the Secretariat

In 2015, the Secretariat of the Panel was affected by staffing problems. It had to operate with just one legal officer for the first four months of the year, two legal officers for approximately three months and only with the full staff of three legal officers from August.

8. International Commentary on Human Rights and Associated Matters in Kosovo

8.1. Extract from the Report of the Working Group, Human Rights Council, United Nations on Enforced or Involuntary Disappearances, General Assembly, United Nations, 17 August 2015

“UNMIK should make additional efforts to encourage the effective continuation of investigations (of war crimes) that were initiated prior to the transfer of power from UNMIK to EULEX Kosovo ...

... Acknowledging the challenging nature of the work of war crimes investigation and prosecution and the efforts made, (to date) EULEX Kosovo must investigate all outstanding cases of enforced disappearances and bring the perpetrators to justice ...

... The Working Group invited the Government of Serbia, the authorities in Kosovo and the Heads of Missions of UNMIK and EULEX Kosovo, within 90 days from the date of presentation of the present report to the Human Rights Council, to submit a timetable showing the steps that they will take to implement the recommendations of the Working Group, the dates by which each measure will be taken and the dates by which they plan to finalize the implementation of the recommendations”³.

Summary

The Working Group on Enforced or Involuntary Disappearances visited Serbia, Kosovo, Croatia and Montenegro from 19 to 26 June 2015, and their report was published on 17 August 2015. Given the amount of time that has elapsed since the enforced disappearances occurred and the advanced age of many witnesses, relatives and perpetrators, it was assessed that there was an urgent need for those involved in the search for missing persons in the region to set as an immediate priority, the establishment of the truth, in particular, to establish the fate and whereabouts of the disappeared.

The Working Group was concerned that regional cooperation was marred with mutual mistrust. It thus called on those involved to foster trust and to promote regional cooperation, inter-ethnic reconciliation and social cohesion. The Working Group stressed that successful cooperation required clear and strong political commitment at the highest levels from the political stakeholders.

The Working Group stressed that enforced disappearance should be established as a separate offence in domestic legislation. The Working Group called on the authorities in Kosovo as follows: to continue their efforts in the search for missing persons and the identification of human remains; to ensure efficient prosecution of war crimes in line with international standards, to adopt all measures necessary to combat impunity and to set up a comprehensive reparation program.

The Working Group was of the view that the international bodies, UNMIK and EULEX Kosovo, as the interim civil administrators in Kosovo, should be held accountable for human rights violations. The Working Group also called on the said international bodies to facilitate the search for missing persons and to ensure effective investigation and prosecution of those responsible for war crimes.

³General Assembly, United Nations, Report of the Working Group on Enforced or Involuntary Disappearances, 17 August 2015, Paras 142, 143 and 146.

The methodology employed by the Working Group consisted of an assessment of the situation in Kosovo with regard to the judicial and prosecutorial situations under the applicable law. This assessment was carried out under the following main headings: legal framework; right to truth; right to justice and the right to reparation.

The Working Group assessed the forensic services, custodial services, witness protection programs, admissibility of evidence, reparation and compensation. The assessment included recommendations directed at the governments of Kosovo and Serbia and to the international authorities, UNMIK and EULEX Kosovo. The Working Group ended its assessment with comprehensive list of conclusions.

Legal framework

The Working Group stated that enforced disappearance has not yet been incorporated as an autonomous crime in the criminal legislation of Kosovo even though the Constitution of Kosovo recognizes the applicability of the standard international human rights declarations, conventions and covenants.

The Kosovo government adopted the Strategy for Human Rights for the period 2009-2011 based on a comprehensive assessment of the human rights situation which included issues related to enforced disappearances and missing persons.

The authorities in Kosovo informed the Working Group about other laws, such as the Law on Witnesses and the Law on the Department of Forensic Medicine and two laws have been adopted which regulate the status of missing persons and guarantees the rights of victims in Kosovo.

The law regulating the Status and Rights of Martyrs, Invalids, Veterans, members of the Kosovo Liberation Army, Civilian Victims of War and their Families determines the status and financial support available to those persons.

The Law on Missing Persons aims to protect the rights and interests of missing persons and their family members, in particular, the right of family members to be made aware of the fate of their missing relatives. The law also outlines the powers and responsibilities of the Governmental Commission on Missing Persons.

Right to truth

Family members and representatives of associations of families of missing persons expressed their frustration about the difficulties they encounter when trying to access the information they require to establish the fate and whereabouts of their relatives.

The lack of precise information on the locations of undiscovered gravesites constitutes one of major obstacles to the establishment of the fate and whereabouts of missing persons. The Working Group reported that Serb authorities are believed to possess more information than that provided in disclosed documentation to date. There is also a common perception in Kosovo that the Serbian army also has full records of the gravesite locations, yet it has not provided full access to its archives.

It is also believed that the Kosovo government has not provided full access to its information either. The reluctance of witnesses to provide information owing to threats, intimidation, a false sense of loyalty or the fear that they might implicate themselves in an alleged crime presents further difficulties.

In relation to identification of human remains of the disappeared, early mistakes in the procedure resulted in significant challenges with their identification in recent exhumations. In that regard, the remains of some 300 persons in the morgue in Pristina have not yet been identified. According to the International Commission on Missing Persons, 412 unidentified individual DNA profiles from Kosovo do not match any of the blood samples in the database. This confirms the suspicion that errors occurred during the identification process in the early years, not least, since the identification process was based on traditional, non-scientific methods.

EULEX Kosovo supports the work of the Kosovo Department of Forensic Medicine in the exhumation and identification of bodies. On 30 October 2014, EULEX Kosovo personnel working for the Kosovo Department of Forensic Medicine executed a court order in Cabrat cemetery in Gjakova/Djakovica where it exhumed 14 graves, with the objective of the correct identification of the remains that were found in Serbia in 2001.

Those buried in Cabrat cemetery and others buried in Kline/Klina and Malisheve/Malisevo, are mainly Kosovo Albanian victims of the events in Gjakova/Djakovica and Kralan/Kraljane, and are linked to more than 50 other such cases of persons still listed as missing.

Those human remains were taken to the Department of Forensic Medicine for further identification and DNA analysis. When the process has been finalized, the said Department will hand over all the identified human remains to their families.

Initiatives taken by civil society to seek and uncover the truth include the collection of evidence, accounts and stories that could contribute to the clarification of the fate of missing persons. Some organizations have also established memorials that provide a venue for families of victims to tell their stories publicly and to memorize their loved ones.

Right to Justice

The complexity of the post conflict political situation contributes greatly to the challenges associated with the prosecution of the war crimes in Kosovo. UNMIK was established in June, 1999 pursuant to United Nations Security Council resolution 1244 with a mandate to bring about a political solution to the Kosovo crisis. As an international civil administration presence, UNMIK was vested with authority over the territory and population of Kosovo, including executive and legislative powers as well the administration of the judiciary and the police.

The Working Group is concerned about information provided to it which indicates that cases of enforced disappearances and missing persons were not properly investigated by UNMIK. The Human Rights Committee further raised concerns about the failure of UNMIK to effectively investigate many of the crimes perpetrated prior to the UNMIK mandate as well as the failure to bring the said perpetrators to justice.

Similarly, the Working Group noted with concern that the UNMIK Human Rights Advisory Panel has ruled in several cases that the investigation of enforced disappearances and missing persons carried out by UNMIK failed to meet the minimum standard of an effective investigation in accordance with international human rights norms. The Working Group considered that the failures by UNMIK in this regard should be properly addressed and the victims of those failures should be compensated by the United Nations.

The mandate of UNMIK was significantly modified in December 2008 at a time when EULEX Kosovo assumed executive powers in the justice, police and customs sectors. The prosecution of War

crimes has since been carried out by the EULEX Kosovo War Crimes Investigation Unit and by EULEX Kosovo prosecutors.

The Working Group considers that alleged failures by the UNMIK judiciary in the early years cannot now serve to absolve EULEX Kosovo prosecutors and investigators of their responsibilities in such circumstances. Neither can the passage of time be proffered as an excuse. The Working Group therefore calls upon EULEX Kosovo to redouble its efforts to safeguard human rights and ensure access to justice for victims.

UNMIK transferred a large number of the case files on missing persons to EULEX Kosovo at the material time. It is alleged that some of these cases were not well documented and that there was no initial investigation in some cases. The Working Group was also informed that EULEX Kosovo recruited two additional prosecutors in 2013 and that EULEX Kosovo judges have competence over war-related criminal trials.

Nevertheless, only a limited number of cases are tried annually despite the efforts made to date to improve matters. In particular, the Working Group was advised that little progress has been achieved in the investigation and prosecution of the abductions that occurred at the height of the conflict in 1999. The Working Group was also informed that no new investigations have been initiated by EULEX Kosovo, since 15 April 2014, except in what is termed “exceptional circumstances”.

Nevertheless, an important initiative in this regard came about with the decision to create a Specialist Chambers and Specialist Prosecutors Office in April 2014. This court will adjudicate cases, including abductions allegedly committed during the conflict by the Kosovo Liberation Army in 1999 and 2000. The Working Group welcomed the fact that, on 3 August 2015, the Kosovo Assembly approved a Constitutional amendment which paved the way for the establishment of this court.

One of the main challenges that investigators are confronted with is that key witnesses are reluctant to provide evidence against potential perpetrators. Furthermore, the lack of an effective witness protection program discourages witnesses to provide evidence, not least, since loyalty to family and clan is paramount in these circumstances.

Notably, however, the Working Group welcomed the efforts of EULEX Kosovo to provide protection for witnesses in high risk cases by their inclusion in the witness protection programme and it emphasised the importance of the further development of this programme.

The Working Group also noted that in the absence of a formal legal framework to authorize courts in Kosovo to use evidence received by the International Tribunal for the Former Yugoslavia, (ICTY), such evidence is introduced on an ad hoc basis by international EULEX Kosovo prosecutors.

The Working Group expressed concern that justice appears to be left to the goodwill of the relevant political stakeholders. Kosovo should not be in such a legal vacuum and the Working Group stated that, at a minimum, those who were most responsible for the war crimes and crimes against humanity, including enforced disappearances, must be prosecuted.

Finally and importantly, the Working Group noted with some concern that many alleged perpetrators of war crimes now occupy high level positions of authority in the government of Kosovo etc.

Right to Reparation

Many victims in Kosovo have not received adequate reparation for their suffering. Reparation in cases of enforced disappearance entails not only monetary compensation, but it also includes access to health care, social benefits, legal aid and rehabilitation programmes.

The Working Group said that the pension of Euros 168 per month for victims leaves many families in poverty. The Working Group also said that administrative obstacle often restrict some victims to their entitlements due to difficulties with documentation, tight deadlines for submission of claims, uncooperative staff and language problems since many officials do not speak the Serbian language.

Additionally, some families of victims of enforced disappearances live in the same community as the alleged perpetrators of those disappearances. While the Working Group did not receive any reports of serious harassment, families of victims feel re-traumatized by that fact. The authorities in Kosovo should facilitate and support the rehabilitation of the families of victims of enforced disappearances and take the necessary measures to enable them to live in an environment conducive to rehabilitation.

Recommendations to UNMIK and EULEX Kosovo

- UNMIK and EULEX Kosovo should engage with international human rights mechanisms with the aim of addressing issues related to enforced disappearance.
- International bodies acting as transitional administrators in Kosovo should be held accountable for their human rights violations.
- All international bodies that hold relevant information regarding cases of enforced disappearances that took place during and immediately after the 1998-1999 events in Kosovo should open their archives and facilitate the search and investigation.
- The International Committee of the Red Cross (ICRC) should continue to chair the Working Group on Missing Persons and facilitate communication and cooperation in the region. The ICRC should further strengthen and expand its initiatives.
- The Working Group on Missing Persons should meet more frequently. In the meantime, the Working Group encourages UNMIK, as an observer of the body, to continue playing an active role.
- UNMIK should seek suitable means to grant compensation to victims of human rights abuses as identified by its Human Rights Advisory Panel, especially in relation to the alleged ineffective investigations into cases of missing persons.
- UNMIK should make additional efforts to encourage the effective continuation of investigations that were initiated prior to the transfer of power from UNMIK to EULEX Kosovo.
- Acknowledging the challenging nature of the work of war crimes investigation and prosecution and the efforts made to date, EULEX Kosovo must investigate all outstanding cases of enforced disappearances and bring the perpetrators to justice.
- In order to encourage testimonies, EULEX Kosovo, in cooperation with the authorities in Kosovo, should establish an effective and comprehensive witness protection programme, including relocation assistance.
- Establish close cooperation with and invest more resources in capacity-building for local police officers, prosecutors, judges and forensic experts, including forensic archaeologists and forensic anthropologists.
- Ensure that ethnic Serbs attend training courses.

Recommendations to the Government of Serbia

- Establish enforced disappearance as a separate offence in accordance with the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance. The offence of enforced disappearance should be punishable by appropriate penalties that take into account the seriousness of such crimes.
- Recognize the status of families of missing persons by law and guarantee their right in a non-discriminatory manner.
- Establish an effective public system of free legal aid to allow relatives of missing persons to obtain legal assistance if they cannot afford it.
- Ensure a gender-sensitive approach when designing and implementing reparation programs, in order to address gender inequality.
- Adopt a national human rights strategy or national action plan on human rights to address the issue of missing persons in a comprehensive manner.
- Strengthen and systematize the witness protection programs to ensure they are comprehensive.
- Ensure reparation is available to all victims of enforced disappearance. Compensation should not be limited to the victims of enemy forces only. Serbia should consider introducing the necessary legislative amendments in order to broaden the definition of victim.
- Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.
- Ensure the equitable allocation of existing resources for the civilian victims of war in order to eradicate the discrimination between, inter alia, the budget for civilian and military victims of war.
- Raise public awareness of war crimes prosecution, including investigation into cases of enforced disappearances, in order to reduce negative feelings about war crimes proceedings.
- Set up regular consultations with families of victims of enforced disappearance and representatives of associations of families of disappeared persons.
- Provide greater institutional and financial support to families and associations of families of victims of enforced disappearance.
- Promulgate a law on access to information and a proper legislative framework on archives, so as to guarantee full access to all information that could potentially lead to clarification in cases of missing persons.
- Examine without undue delay all locations of potential mass grave sites.
- Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove obstacles of the ongoing identification work.
- Expedite the process of war crimes prosecutions.
- Initiate a vetting process to identify all government officials who were allegedly involved in the commission of war crimes. Improve and systemize vetting measures in the recruitment and appointment of State officials.
- Conduct effective negotiations and reach an agreement on war crime cases with the authorities of Kosovo in order to establish an operational protocol on cooperation in the investigation and prosecution of war crimes.
- Ensure media freedom and use the mass media to raise awareness of the issue of missing persons in the region.

- Pay equal attention to all victims, regardless of their nationality, in respect of memorials. This principle should be integrated into future activities related to these elements of reparation.
- Develop educational materials that promote pluralism, and teach history objectively in order to combat ethnic polarization and ethnic discrimination.

Recommendations to the Government of Kosovo

- Intensify efforts in the search for missing persons and the identification of human remains that have been exhumed.
- Seek technical assistance from international bodies operating on the ground to conduct institutional reforms aimed at establishing an independent and efficient judicial system.
- Conduct effective negotiations and reach an agreement on war crime cases with the Serbian authorities in order to establish an operational protocol on cooperation in the investigation and prosecution of war crimes.
- Conclude cooperation agreements with other international mechanisms involved in the investigation and prosecution of war crimes in order to facilitate technical cooperation, such as acquiring evidence, statements and documents related to the war in Kosovo.
- Hold consultations with associations of families of missing persons, civil society organizations and other relevant stakeholders on the establishment of a central register on missing persons to ensure that it contains all the information necessary to facilitate the clarification of the fate and whereabouts of missing persons in a transparent, inclusive and consultative manner.
- Engage minority groups and ensure they are adequately represented in the Commission on Missing Persons. The Commission should ensure the implementation in practice of the principle of non-discrimination.
- Engage associations of families of missing persons and encourage them to nominate members of the Commission on Missing Persons.
- Organize joint commemorations for victims of missing persons from all ethnic backgrounds.
- Adopt a law on the use in Kosovo of evidence collected by the International Tribunal for the Former Yugoslavia in order to ensure that evidence gathered by the Tribunal will continue to be admissible after the transfer of the mandate to local courts and prosecutors, protecting confidentiality rules.
- Immediately open archives relevant to cases of enforced disappearances that took place during and immediately after the 1998-1999 events in Kosovo, in order to facilitate the identification of undiscovered gravesites and to speed up the search.
- Provide the families of missing persons with adequate and effective reparation.
- Consultations with victims from all ethnic groups should be held to hear their views on the specific nature of the reparation that they need. Language support should be provided upon request.
- Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.
- Establish and effectively implement a comprehensive witness protection programme, with the support of international organizations.
- Adopt a gender-sensitive approach when designing and implementing reparation programmes, in order to address gender inequality. Relocation assistance should be provided in cases where the victims live in the same community as the alleged perpetrators in order to facilitate the victims' rehabilitation and prevent them from being re-traumatized.

- Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove the obstacles to the ongoing identification work.
- Ensure freedom of the media and use the mass media to raise awareness of missing persons in the region. Develop educational materials that promote pluralism, and teach history objectively in order to combat ethnic polarization and ethnic discrimination.
- Establish a strong vetting process in order to ensure that alleged perpetrators of war crimes are not appointed to positions of authority.

Working Group Conclusions

Considering the amount of time that has elapsed since the disappearances occurred in 1999 and 2000 and the advanced age of many relatives and witnesses, there is an urgent need for those involved in the search for missing persons to set as an immediate priority, the establishment of the truth, and in particular to establish the fate and whereabouts of the disappeared.

The issue of disappearances should be considered as a humanitarian as well as a human rights issue. In particular, it should be on the agenda of the Belgrade-Pristina dialogue facilitated by the High Representative of the European Union for Foreign Affairs and Security Policy.

The Working Group recognized that the United Nations and other international bodies did not adequately address a number of issues in relation to missing persons, and that the international community is also responsible for the lack of truth, justice and reparation.

The Working Group acknowledged the working-level cooperation that takes place between forensic experts, prosecutors and judges throughout the region. However, the level of cooperation, including cooperation between UNMIK and EULEX Kosovo as well as the governments of Kosovo and Serbia, needs to be enhanced. Successful cooperation requires clear and strong political commitments from the highest levels of all concerned stakeholders.

Currently, regional cooperation is marred by mutual mistrust, which, inter alia, delays exhumations. Therefore, building trust between concerned parties is of high importance, the parties must contribute to that process by putting ill-will behind them and by fostering a trusting environment that will further promote regional cooperation.

In the meantime, mature political judgment and determined political leadership are required in order to promote inter-ethnic reconciliation and social cohesion that could eventually help establish truth in the region.

The Working Group was deeply saddened by the unbelievable suffering that the relatives of missing persons endure and have endured since 1999 and 2000. In the hope that it may contribute to a resolution of this problem, the Working Group reiterated its offer of future assistance and cooperation with all concerned parties.

Finally, the Working Group wished to place on record its appreciation for all the cooperation and assistance which it received from the concerned parties during its visit.

8.2. Public Presentation and Analysis of Decisions of the UNMIK Human Rights Advisory Panel - Responsibility of the United Nations (UNMIK) for Enforced Involuntary Disappearances and Murders of Serbs in Kosovo

(Extract from the Report on the Coordination of the Serbian Associations of Families of Missing Persons - the territory of former Yugoslavia, 20 November 2015)

Introduction

The Coordination of the Serbian Associations of Families of Missing Persons from the territory of former Yugoslavia (Coordination) held a round table discussion in Belgrade on 20 November 2015 on the theme: "Responsibility of the United Nations (UNMIK) for enforced or involuntary disappearances and murders of Serbs in Kosovo and Metohija".

Conclusions on Responsibilities and Obligations of UNMIK and EULEX Kosovo

1. The Coordination expressed its appreciation to the UNMIK Human Rights Advisory Panel (HRAP) for its review of the complaints of alleged human rights violations by UNMIK during its civil administration of Kosovo.

It noted that the HRAP had established 155 violations of Articles 2 and 3 of the European Convention of Human Rights (ECHR) and 71 violations of Article 2 of the ECHR.

The Coordination criticised the decision by UNMIK to introduce a deadline for the submission of such complaints on 31 March, 2010. This imposition of the deadline had the effect of excluding approximately 400 further potential complaints of human rights violations under Articles 2 and 3 of the ECHR.

2. The Coordination claimed that UNMIK, as a surrogate state, with an international civil administration presence did not discharge its mandated responsibility to protect the right to life:

... "that UNMIK did not prevent mass and organised ethnic cleansing, enforced or involuntary disappearances, murders, inhuman treatment and torture of Serbs and other non-Albanians in Kosovo and Metohija, committed after 10 June 1999 by members of the so called Kosovo Liberation Army"⁴ ...

... "that in cases of enforced or involuntary disappearances of Serbs and other non-Albanians, processed by HRAP, UNMIK did not take any steps towards effective criminal investigations even in cases where UNMIK was in possession of information on important facts on committed crimes"⁵ ...

⁴ Report - Coordination of the Serbian Associations of Families of Missing Persons from the Territory of the former Yugoslavia, 27 November, 2015, Conclusions, Page 1, Para 2a)

⁵ Report - Coordination of the Serbian Associations of Families of Missing Persons from the Territory of the former Yugoslavia, 27 November, 2015, Conclusions, Page 2, Para 2b)

3. The Coordination expressed its concern that UNMIK did not allegedly include information on the work of the HRAP or its decisions, in its quarterly reports to the UN Security Council in which reports (HRAP) placed responsibility on UNMIK for the enforced or involuntary disappearances and murders of Serbs in Kosovo and Metohija.
4. The Coordination protested about the alleged subsequent failure of the European Union Rule of Law Mission (EULEX Kosovo) to initiate or resume effective criminal investigations in the above matters and thereby bring to justice the perpetrators of the said crimes.

Requests to UNMIK and EULEX Kosovo

The Coordination requested that UNMIK submit a summary report on the work of HRAP to the UN Security Council in its next quarterly report, in particular with regard to those decisions which concern the responsibility of UNMIK for enforced or involuntary disappearances and murders, which occurred during the executive mandate of UNMIK;

The Coordination requested that UNMIK undertakes effective measures, to include a request to the General Secretary, United Nations, to the UN Security Council and to EULEX Kosovo, which notably operates under the authority of UN Security Council Resolution 1244/1999, to ensure the implementation of the recommendations contained in the decisions of HRAP namely:

- a) A public acknowledgement of the responsibility of UNMIK for violations of human rights;
- b) That UNMIK initiate or resume effective investigations into the said war crimes;
- c) That UNMIK establish a fund to provide comprehensive reparation for the families of the victims;
- d) That UNMIK undertakes measures to implement the recommendations contained the report of the Working Group on enforced or involuntary disappearances.

The Working Group requests, inter alia, that EULEX Kosovo undertake the necessary action to initiate, resume and complete criminal investigations and to bring to justice the perpetrators of the said war crimes outlined in the human rights violation decisions of the HRAP, this initiative to include the assumption of responsibility for such war crimes cases as have been transferred to the local judiciary;

That the government of the Republic of Serbia endeavours to ensure that the next UNMIK quarterly report to the UN Security Council includes a summary report on the work and decisions of HRAP, in particular in relation to the responsibility of UNMIK in cases of enforced or involuntary disappearances and murders, and violations of Articles 2 and 3 of the ECHR which occurred during the executive mandate of UNMIK;

That the UNMIK SRSG amends Article 5 of Administrative order 2009/1, which amended UNMIK Regulation 2006/12 on the Establishment of the Human Rights Advisory Panel. This Administrative order established 21 March 2010 as the deadline to file complaints before the Panel. Consequently, a large number of complainants who were unaware of this amendment did not have an opportunity to file complaints.

8.3. Extract from the Report of Human Rights Watch World Report 2016 on the Human Rights Review Panel.

The Human Rights Review Panel, an independent body set up in 2009 to review allegations of human rights violations by EULEX Kosovo, ruled on two cases during the year. In April, the panel found that EULEX had violated the European Convention on Human Rights by failing to investigate the harm suffered by 116 Roma who spent time in a number of camps for internally displaced persons, some contaminated with lead, during and as a result of the 1999 conflict.

In another case in April, the Panel found no violation of the complainants' rights that could be attributable to EULEX. The case involved alleged brutality by Kosovo police against 10 Serbian citizens who attended Christmas celebrations in the town of Gračanica in 2013. Thirty cases were pending before the Panel at time of writing⁶.

(NOTE) In order to update the information provided above by Human Rights Watch, it may be noted that the Panel reviewed 24 complaints during the reporting period and it found that EULEX Kosovo committed human rights violations in 4 instances. The Panel also issued 1 decision on interim measures and declared 7 complaints inadmissible. The Panel further found that there was no violation on completion of its review of 12 additional cases.

In summary, in the first case, the violation concerned an omission by EULEX Kosovo in contravention of Art 13 of the European Convention on Human Rights, (ECHR) and the other three violations related to multiple breaches of Articles 2, 3, 6, 8 and Article 1 of Protocol 1 of the ECHR.

8.4. Extract from a Dissertation titled “International Responsibility for Human Rights Violations by International Organisations in Post-Conflict Situations. Lessons from Kosovo”⁷

(pp. 39 ff.)

Two important trends in matters of responsibility of international organisations in post-conflict situations emerge from the case law of the Panels.

Firstly, as already underlined, the vast majority of the complaints relate to the alleged violation of positive obligation by UNMIK or EULEX. In a number of bold decisions, the Panels have held that (at least) procedural obligations and the duty of due diligence are not affected by the interim (UNMIK) or limited (EULEX) powers of the International Organisations (IO's), nor by the post-conflict situation itself. Moreover, the Panels themselves show a general tendency towards the legal

⁶ Human Rights Watch, World Report 2016, Impunity, Accountability, and Access to Justice, page 8.

⁷ University of Nottingham, Dissertation for Degree of Masters of Law (LLM), LLM in International Law by Alessio Gracis, MA (Trento). See full document at:

https://www.academia.edu/22763129/International_Responsibility_for_Human_Rights_Violations_by_International_Organisations_in_Post-Conflict_Situations_Lessons_from_Kosovo

At the time of publication of the Annual Report Alessio Gracis was an intern with EULEX working in the Human Rights and Legal Office of the Mission.

characterisation of the complaints in terms of positive, rather than negative obligations. As observed above, the explicit application of human rights law to IOs is in itself worth a mention. But the existence – and the extent – of positive human rights obligations is ground-breaking. According to the Panels, these obligations stem from the mandate and the powers of the two Missions. Admittedly, the unique situation of UNMIK justifies such an expansive approach on part of the HRAP. After its full deployment and until the Kosovo declaration of independence, UNMIK was in effective control of the territory of Kosovo, where it exercised (together with KFOR) the public powers normally exercised by a State⁸. Therefore e.g. the failure to undertake an effective investigation in MMP cases or (if proven) to take positive steps to improve the health, housing and living conditions of Roma families in IDPs camps are clearly related to UNMIK's state-like role in Kosovo.

Nonetheless, the jurisprudence of the HRRP with respect to EULEX proves that the state-likeness of the international territorial administration is not a crucial factor for the existence of positive obligations. On the contrary, they can also be derived from a mandate which (as is the case of EULEX) entrusts the IO with limited executive powers. While this point will be elaborated in the next Chapter, it can be provisionally stated that the findings of the Panels are applicable *mutatis mutandis* to all situations in which – and to the extent that – peace operations are vested with transitional administrative or executive powers, no matter how limited. As observed at the outset of this paper, this is the case for the vast majority of modern peace operations⁹.

The second trend that emerges from the case law of the HRAP and the HRRP concerns the approach adopted in matters of attribution. The Panels seem to favour an institutional approach, in line with the UN practice. In particular, in the jurisprudence of the HRAP attribution to UNMIK of acts of the Provisional Institutions of Self-Government and of other IOs are essentially based on the overall authority exercised in Kosovo by UNMIK in the person of the Special Representative of the Secretary General. The influence of *Behrami* and *Saramati* is evident, but the HRAP seems to be conscious of the flaws in the ECtHR's reasoning and arguably does not fully adhere to it. What is more, although from the perspective of the Panels attribution does not seem to be a contentious issue, it is submitted here that the situation is potentially much more nuanced than what the straightforward case law of the Panels suggests. In particular, attribution of acts and omission of UNMIK and EULEX police (who are seconded personnel and to some extent subject to national regulations and control) could lead to opposite results if adjudicated by a national court, as the *Nuhanović* case before the Dutch courts shows¹⁰. The Panels have thus far avoided engaging directly with these issues, also by virtue of a wise legal characterisation of the complaints as allegations of a breach of positive obligations due to a failure in carrying out the relevant Mission's mandate.

As is apparent from these considerations, the two trends described are not unrelated. They are indeed a touchstone of the 'institutional accountability' that constitutes the primary goal of the HRAP and the HRRP, that is to say the same model of accountability that prompted the creation of these internal review mechanisms. Accordingly, the very creation and scope of review of these Panels may have incentivised an 'expansive' approach towards the definition of primary obligations, as well as in matters of attribution, which has arguably resulted in an increase of situations where UNMIK or EULEX can be held responsible for human rights violations. The concept of 'institutional accountability' refers to the obligations stemming from the very deployment of the mission, from the setting of a specific range of objectives and from the possible failure to carry

⁸ Cf. *Behrami and Saramati* para. 70.

⁹ Cf. Haeussler, 215-222.

¹⁰ Chapter I, Section C.

them out successfully and in compliance with human rights standards¹¹. Those obligations are pending first and foremost on the leading IO, be it the UN or the EU. In relation to those human rights violations, the potential responsibility of contributing States will have to be based on different (legal) grounds.

(...)

The overview of the jurisprudence of the HRAP and the HRRP reinforces the opinion – already manifested in the conclusions of Chapter I – that functional and institutional aspects should not be overlooked when analysing the international responsibility of IOs. From the (unusual) point of view of Panels mandated to review alleged human rights violations committed by IOs, responsibility is first and foremost a matter of powers, functions and mandate. It is the international mandate, in particular, to be constantly referred to in the Panels' case law, in order to determine what the functions of the Mission and its subsequent duties are, and accordingly to what extent a failure to carry them out entails the violation of a human rights obligation pending on the Mission (and thus on the IO). As observed above, even though the unique situation of Kosovo under UNMIK had an important role in shaping the case law of the HRAP, the possibility of extending the same rationale to all peace operations entrusted with some transitional authority or executive power is confirmed by the case law of the HRRP, which *mutatis mutandis* goes down the same road with respect to acts imputable to EULEX.

The mandate does not only confer transitional administrative or executive powers on the IO, but it also determines the IO's duties. Thus, for instance, UNMIK's power to exercise "civil law and order (...) through the deployment of international police personnel to serve in Kosovo"¹² clearly determines a duty for UNMIK to do so. To whom is that duty owed? To the States that agreed on its deployment? To the Organisation or the specific organ that established it? To the host State? The answer inevitably depends on the model of accountability at issue. Crucially, in a human rights law perspective, those duties are owed to the individuals that are potentially affected by the exercise of power by the IO. Accordingly, powers and duties become the key benchmark to determine the human rights obligations of the IO exercising some form of authority and control. As has been put it, "it is that capacity for control that simultaneously creates a potential for, and a duty to avoid, human rights abuse"¹³.

(...)

9. Conclusions

The Panel wishes to take this opportunity to draw attention to a number of issues which it considers important to the future of the Mission and to what should happen in its aftermath.

The Panel considers it essential that the Mission should remain strongly committed to guaranteeing and upholding human rights principles until the end of its mandate. This continued commitment is essential to maintaining the credibility of EULEX and to ensuring that its legacy is not prejudiced by

¹¹ Cf Kearney et alii, 10-13.

¹² SC res 1244/1999, para. 11 (i).

¹³ Mégret and Hoffman, 'The UN as a Human Rights Violator? Some reflections on the United Nations Changing Human Rights Responsibilities', (2003) 25 Human Rights Quarterly 314, 323; see also the seminal contribution of Eagleton, 'International Organizations and the Law of Responsibility', (1950-51) 76 *Recueil des Cours* 319, 386.

further reputational issues. The Panel is encouraged in that respect by the Head of Mission's consistent responsiveness to the recommendations of the Panel.

Should a rule of law mission operate beyond the current deadline, it will be essential that an accountability mechanism should be kept in place to ensure that this mission will uphold the same basic standards of human rights as those relevant to the current mission. A clear and unambiguous institutional commitment to upholding such standards through a continued strong accountability mechanism must form an essential part of the mission's future architecture.

In relation to such an accountability mechanism, consideration should be given to giving it limited *proprio motu* powers. This would enable it to react promptly in order to address human rights concerns when they become apparent to the Panel without awaiting the filing of a formal complaint by an affected party. This would help alert the leadership of the mission to any institutional or policy flaw that could later transform itself into a much more serious human rights issue. It will also be essential that a structure be put in place within the mission to respond to and implement its recommendations as is presently the case with the Human Rights and Legal Office. In this regard the Panel is of the view that a continuation of the current follow-up procedure on the recommendations of the accountability mechanism is essential.

In addition, consideration should be given to the possibility for the accountability mechanism to grant financial reparation to individuals whose human rights are found to have been violated by the Mission, and possibly within strict limits which could be set out in the founding documents of any new Mission. This, the Panel feels, would greatly enhance the effectiveness of the accountability mechanism, positively contribute to the reputation of the Mission and provide for a more effective remedy system than is currently in force at the Panel.

In relation to any future Mission, an analysis of the categories of cases in which human rights violation have been found should be undertaken which would be of relevance and assistance to the planning and legal architecture of any future Mission. Adequate and effective safeguards could be built around lessons learnt from the experience of the present Mission.

Should the Mission not extend its mandate beyond its current deadline, it is essential that an appropriate mechanism is established which will allow the Panel to continue to fulfil its mandate for a specific time period, to the extent necessary for processing complaints made within the six month time limit and for finalising the examination of complaints still being processed. This implies not just a continuation of the existence of the Panel (and availability of personnel) but also the availability of competent staff within a residual mechanism to respond to and address the Panel's enquiries.

The Panel is of the view that all of its decisions where violations were found to have occurred should be brought to the attention of staff members for training purposes and in order to avoid similar violations occurring in the future. In addition, the Mission should ensure delivery of training in a common human rights standard, for all members of the Mission, coming from various countries with different legal cultures, through appropriate training programmes.

The Panel would also underline the clear connection that exists between security and effective human rights protection. Absent a secure environment in which every individual feels safe to live his or her life, human rights and the rule of law are unlikely to flourish. It is therefore essential that the EU's strong commitment to human rights be integrated into its overall security policy in Kosovo, in particular as regard the situation in the North of Kosovo. Support for local efforts – in

particular, through the judiciary – to create a strong rule of law environment should be supported and enhanced.

The Panel is concerned that the protection of minorities should remain an important priority for the Mission, for the EU and for local authorities. Human rights must be guaranteed regardless of ethnicity, religion or nationality. Discrimination based on such criteria should be effectively combatted and eliminated at all institutional and political levels. The Panel considers that a commitment to end to combat such discriminations in Kosovo should be a core feature of the future of the mission.

ANNEX 1 Staff table

Panel	
Magda Mierzewska	Presiding Panel Member
Guénaël Mettraux	Panel Member
Katja Dominik	Panel Member, EULEX Judge
Elka Filcheva-Ermenkova	Substitute Panel Member, EULEX Judge

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

ANNEX 2 Statistics 2010 - 2015

	2010	2011	2012	2013	2014	2015	Total
Registered cases in total	16	28	23	27	42	16	152
Finalized cases in total	6	30	10	20	28	27	121
Admissible			2		1	8	11
Inadmissible	6	22	10	13	22	12	85
Violation	0	2	0	7	2	4	15
No violation	0	5	0	0	1	10	16
Strike out	0	1	0	0	3	1	5

	As of 31 December 2015
Pending	31
Communicated to HoM	15

ANNEX 3 Decisions of the HRRP 2010-2014

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

Case	Complainant	Subject matter	Result
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
2011-02	Chamalagai Krishna Bahadur	Alleged Failure to Act	Inadmissible
2011-03	Afrim Mustafa	Dispute with regard to closing down a private radio station and confiscation of radio equipment	Inadmissible
2011-04	Besim Berisha	Complaint about living conditions in Dubrava Prison	Strike out
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
2011-06	Milazim Blakqori	Alleged non-enforcement of a decision, failure to act by EULEX	Inadmissible
2011-07	Case W	Alleged violation of Article 6 ECHR	Violation
2011-08	Anton Rruka	Alleged denial of the right to a fair hearing, freedom of expression and equality before the law, SCSC.	Inadmissible
2011-09	Mirkovic Bojan	Alleged unlawful dismissal from EULEX	Inadmissible
2011-10	Dejan Jovanović	Alleged undue delay in the proceedings before the SCSC.	Inadmissible
2011-11	Srecko Martinović	Alleged excessive use of force, inhumane treatment and denial of right to a fair trial	Inadmissible
2011-12	Novica Trajković	Alleged excessive use of force	Inadmissible
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
2011-14	Lindita Shabani	Alleged denial of the right to private and family life	Inadmissible
2011-15	Samedin Smajli	Alleged denial of a fair trial and undue delay in proceedings	Inadmissible
2011-16	Avdyl Smajli	Alleged denial of a fair trial and undue delay in proceedings	Inadmissible
2011-17	Faik Azemi	Alleged denial of the right to a fair hearing	Inadmissible
2011-18	Mykereme Hoxha	Alleged failure to act by EULEX Prosecutor	Inadmissible
2011-19	Sefer Sharku	Alleged failure to respect a binding court-decision.	Inadmissible
2011-20	X and 115 other complainants	Alleged failure by EULEX to protect the health and life of persons living in the lead contaminated Roma	Violation

Case	Complainant	Subject matter	Result
		camps.	
2011-21	Ventor Maznikolli	Alleged undue delay by EULEX judges in scheduling a Supreme Court hearing.	Inadmissible
2011-22	Hysni Gashi	Alleged denial of a fair trial and alleged incompetence of EULEX judges.	Inadmissible
2011-23	Hashim Rexhepi	Alleged violations of the right to liberty and the right to a fair trial.	Inadmissible
2011-24	Predrag Lazić	Alleged failure to get a fair hearing in a reasonable time.	Inadmissible
2011-25	Shaip Gashi	Alleged deprivation of German disability pension.	Inadmissible
2011-26	Njazi Asllani	Alleged non-enforcement of a decision, failure to act by EULEX	Inadmissible
2011-28	Case Y	Alleged breach of the right to respect private and family life.	Inadmissible
2012-01	Qamil Hamiti	Alleged denial of the right to a fair hearing	Inadmissible
2012-02	Arben Zeka	Alleged failure to adjudicate property case	Inadmissible
2012-03	Rexhep Dobruna	Alleged denial of the right to a fair hearing.	Inadmissible
2012-04	Izet Maxhera	Property related dispute with EULEX in Mitrovica.	Inadmissible
2012-05	Fatmir Pajaziti	Alleged breach of right to liberty and right to a fair trial.	Inadmissible
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
2012-07	Case I	Alleged failure to act by EULEX Prosecutor and EULEX Police	Inadmissible
2012-08	Case U	Alleged violation of Article 6 of the European Convention on Human Rights (ECHR)	Inadmissible
2012-09	Case A	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 ECHR	Violation
2012-10	Case B	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 ECHR	Violation
2012-11	Case C	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 ECHR	Violation
2012-12	Case D	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 ECHR	Violation
2012-13	Bejtush Gashi	Alleged violations of Article 6 ECHR and Article 1 of Protocol 1 ECHR	Inadmissible
2012-14	Valbone Zahiti	Alleged violation of Article 8 ECHR	Violation

Case	Complainant	Subject matter	Result
2012-15	Shefqet Emerllahu	Alleged violation of Article 6 ECHR, failure to investigate	Inadmissible
2012-16	Kristian Kahrs	Alleged violation of Article 6 ECHR, failure to act	Inadmissible
2012-17	Case E	Alleged violations of Articles 5 and 6 of ECHR	Inadmissible
2012-18	Hamdi Sogojeva	Alleged violation of Article 1 of Protocol 1 of the ECHR	Inadmissible
2012-19	Case H	Alleged confiscation of property	Violation
2012-20	Case G	Alleged violations of Articles 3, 10, 11 ECHR and Article 1 of Protocol 1 ECHR	Violation
2012-21	Mirko Krlić	Alleged violations of Article 9 ECHR and Article 2 of Protocol 4 ECHR	No violation
2012-22	Zoran Stanisić	Alleged violations of Articles 3, 6 and 8 ECHR and Article 1 of Protocol 1 ECHR	Violation
2012-23	Predrag Blagić	Alleged violations of Article 5 ECHR and Article 2 of Protocol 4 ECHR	Strike out
2013-01	Case I	Alleged violation of Article 6 ECHR	Inadmissible
2013-02	Arsim Krasniqi	Alleged violation of Article 3 ECHR	Inadmissible
2013-03	Goran Becić	Alleged violations of Articles 13 and 14 ECHR and Article 1 of Protocol 1 ECHR	Violation
2013-04	J	Alleged violation of Article 6 ECHR (access to justice).	Inadmissible
2013-05	Case K	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-06	Case L	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-07	Case M	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-08	Case N	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-09	Case O	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-10	Case P	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-11	Case Q	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-12	Case R	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-13	Case S	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation
2013-14	Case T	Alleged violations of Article 3, 5, 13 and 14 ECHR	No violation

Case	Complainant	Subject matter	Result
2013-15	Gani Zeka	Alleged violations of Article 6 and Article 1 of Protocol No 1 of ECHR	Inadmissible
2013-16	Almir Susaj	Alleged violation of Article 3 and 8 ECHR	Inadmissible
2013-17	Ramadan Rahmani	Alleged violation of Article 1 Protocol 1 ECHR	Inadmissible
2013-18	Jovanka, Dragan, Milan Vuković	Alleged violation of Article 1 Protocol 1 ECHR	Inadmissible
2013-19	U	Alleged violation of Article 1 Protocol 1 ECHR	Inadmissible
2013-20	Shaip Gashi	Alleged violations of Article 1 of Protocol 1 ECHR	Inadmissible
2013-22	Gani Gashi	Alleged violation of Article 6 ECHR	Inadmissible
2013-23	V	Alleged violations of Article 6 and Article 1 of Protocol 1 of ECHR	Inadmissible
2013-24	Emin Maxhuni	Alleged violation of Article 1 of Protocol 1 of ECHR	Inadmissible
2013-25	Milorad Rajović	Alleged violation of Article 1 of Protocol 1 ECHR	Inadmissible
2013-26	Selami Taraku	Alleged violation of Article 1 of Protocol 1 ECHR	Inadmissible
2013-27	Shaban Kadriu	Alleged violations of Article 6 and Article 1 of Protocol No 1 ECHR	Inadmissible
2014-01	Nexhat Qubreli	Alleged violations of Article 5 and Article 6 ECHR	Inadmissible
2014-02	Milica Radunović	Alleged violation of Article 6 ECHR	Inadmissible
2014-03	Case A.Z.	Alleged violation of Articles 3, 8 and 13 ECHR	Strike out
2014-04	Tomë Krasniqi	Alleged violation of Article 1, 3, 6, 14 and 17 ECHR, Article 1 of Protocol No 1 ECHR	Inadmissible
2014-05	Mazlam Ibrahim	Alleged violations of Article 6 and Article 1 of Protocol 1 of ECHR	Inadmissible
2014-06	Case B.Y.	Alleged violation of Article 6 ECHR	Inadmissible
2014-07	Fitore Rastelica	Alleged violation of Article 6 ECHR	Inadmissible
2014-08	C.X.	Alleged violation of Article 6 ECHR	Inadmissible
2014-09	Rifat Kadribasic	Alleged violations of Article 6 and Article 1 of Protocol 1 of ECHR	Inadmissible
2014-18	Fitim Maksutaj	Alleged violation of Article 6 ECHR	Violation
2014-19	Fahri Rexhepi	Alleged violations of Article 6 and Article 1 of Protocol No 1 ECHR	Inadmissible
2014-20	Mensur Fezaj	Alleged violation of Article 1 of Protocol No 1 ECHR	Inadmissible

Case	Complainant	Subject matter	Result
2014-21	Shefki Hyseni	Alleged violation of Article 5 ECHR	Strike out
2014-22	Ismajl Krapi	Alleged violation of Article 6 ECHR	Inadmissible
2014-23	Shaip Selmani	Alleged violation of Article 6 ECHR	Inadmissible
2014-24	Case J.Q.	Alleged violation of Article 6 ECHR	Inadmissible
2014-25	Nuha Beka	Employment Dispute	Inadmissible
2014-28	Selatin Fazliu	Alleged violation of Article 1 of Protocol No 1 ECHR	Inadmissible
2014-26	Ajet Kaciu	Alleged violation of Article 1 of Protocol No 1 ECHR	Inadmissible
2014-27	Qerim Begolli	Alleged violation of Article 1 of Protocol No 1 ECHR	Inadmissible
2014-29	Shemsi Musa	Alleged violation of Article 1 of Protocol No 1 ECHR	Inadmissible
2014-30	Abdilj Sabani	Alleged violation of Article 1 of Protocol No 1 ECHR	Inadmissible
2014-31	Case K.P.	Alleged violation of Article 6 ECHR	Inadmissible
2014-32	L.O.	Alleged violation of Articles 2 and 3 ECHR	Violation
2014-33	Arben Krasniqi	Alleged violation of Articles 5 and 6 ECHR	Inadmissible
2014-38	Slavica Mikic	Alleged violation of Article 13 ECHR	Inadmissible
2014-40	Avni Hajdari	Alleged violation of Article 6 ECHR	Strike out
2014-41	Liridona Mustafa Sadiku	Alleged violation of Articles 2 and 3 ECHR	Inadmissible
2014-42	Bujar Zherka	Alleged violations of Article 6 and Article 1 of Protocol No 1 ECHR	Inadmissible

ANNEX 4 Schedule of outreach campaign and other activities

	Date	Location	Event	Panel	Secretariat	Organisation
1	20/05/15	HRRP Building	Meeting with Mr Roland Bless, Head of PPIO EULEX	Magda Mierzewska, Guenael Mettraux, Katja Dominik, Elka Filcheva-Ermenkova	Joanna Marszalik	
2	21/05/15	EULEX Chicken Farm Building	Meeting with Mr Alban Ragg, Head of Executive Police and the Command of EXPOL	Magda Mierzewska, Guenael Mettraux, Katja Dominik, Elka Filcheva-Ermenkova	Joanna Marszalik & John Ryan	
3	07/05/15	Office for Kosovo and Metohija, North Mitrovica	Meeting with Ms Zlata Radovanovic , Coordinator of Office for Kosovo and Metohija, Daniela Milic, Officer of the Office for Kosovo and Metohija		John Ryan & Katica Kovacevic	
4	07/05/15	HRRP Building	Meeting with Support to the implementation of strategies for IDPs, refugees and returnees, Massimo Moratti & Rastko Brajkovic		Joanna Marszalik	
5	19/05/15	Serb Orthodox Church, Istok,	Meeting Fr Milos and Fr Nebojsa		John Ryan & Katica Kovacevic	
6	27/05/15	UNHCR Office Pristina	Meeting with Mr Narasimha Rao Chief of Mission UNHCR Kosovo		John Ryan & Kushtrim Xhaferi	
7	16/06/15	Office for Kosovo and Metohija, North	Meeting with Ms Zlata Radovanovic , Coordinator of Office for Kosovo and Metohija,	Magda Mierzewska, Guenael Mettraux, Katja	John Ryan, Joanna Marszalik & Katica Kovacevic	

		Mitrovica		Dominik, Elka Filcheva-Ermenkova		
8	24/06/15	Villa Germia Pristina	Round table discussion on the subject "Pavements and their impact on human rights".		John Ryan & Shpresa Gosalci	Ombudsperson, Handikos, Rec, Pristina Municipality, Police.
9	24/06/15	Ombudsperson Pristina	Meeting with Mr Sami Kurteshi, Ombudsperson		John Ryan & Kushtrim Xhaferi	
10	28/07/15	Ombudspersons Institution, Pristina	Meeting with Mr Hilmi Jashari, Ombudsperson		John Ryan, Joanna Marszalik & Kushtrim Xhaferi	
11	01/10/15	Office for Kosovo and Metohija, North Mitrovica	Meeting with Ms Zlata Radovanovic, Coordinator of Office for Kosovo and Metohija and Bratislava Radovanovic, (BR) Officer of the Office for Kosovo and Metohija		John Ryan, Paul Landers & Katica Kovacevic	
12	19/10/15	Association for Mission and Kidnapped Persons, Belgrade Serbia	Meeting with Olivera Gazikalovic, Coordinator of the Association, Olgica Bozovic, member, Dusko Celic, member, and Verica Tomanovic, member of the Association for Mission and Kidnapped Persons		Paul Landers & Katica Kovacevic	
13	20/10/15	Commission for Missing and Kidnapped Persons Government of the Republic of Serbia	Meeting with Vesna Boskovic, Coordinator of the Commission, and Dragan Jenic, Head of Office of the Commission for Missing and Kidnapped Persons		Paul Landers & Katica Kovacevic	
14	21/10/15	Project for Legal	Meeting with Rastko Brajkovic and Milena		Paul Landers &	

		Aid to IDPs, Belgrade Serbia	Sosic, Legal Officers of the Project for Legal Aid to IDPs		Katica Kovacevic	
15	29/10/15	Hotel Sirius, Pristina	Conference co-hosted by the "Justice and the People Campaign" and the Balkan Investigative Reporting Network,		John Ryan & Kushtrim Xhaferi	
16	09/11/15	Vidane, Klina Municipality	Meeting with Bozidar Sarkovic, President, Klina Municipality, Ivan Popovic, Member Inteerim Authority and Vesna Pesic, Secretary Klina Municipality		John Ryan & Katica Kovacevic	
17	12/11/15	HRRP Building, Pristina	Meeting with Mr John ROUSE, Chief of Staff EULEX Kosovo	Magda Mierzewska, Guenael Mettraux, Katja Dominik, Elka Filcheva- Ermenkova	John Ryan, Joanna Marszalik & Paul Landers	
18	19/11/15	Vidane, Klina Municipality	Meeting with Bozidar Sarkovic, President, Klina Municipality, Vuleta Vostic, Mihajlo Cekrljic and Vladimir Radosavlevic Representatives of village Drsnik Klinavac, Klina Municipality		John Ryan & Katica Kovacevic	
19	23/11/15	Hotel Emerald	Reception - 15th Anniversary of the Establishment of the Ombudsperson Institution of Kosovo		John Ryan & Kushtrim Xhaferi	Ombudsperson Institution of Kosovo
20	07/11/15	Nemanjina 11, Belgrade, Serbia	Igor Popovic, Head of the Group for Justice, Human Rights and Property Rights, Office for Kosovo and Metohija , Slobojanka Bobic,	Magda Mierzewska, Guenael Mettraux, Katja Dominik, Elka	John Ryan, Joanna Marszalik, Paul Landers & Katica Kovacevic	

			Adviser, Department of Legal Affairs, Office for Kosovo and Metohija, Dragan Jenic, Head of the Commission for Missing Persons and Vesna Boskovic, Coordinator, Office for Missing Persons, Government of the Republic of Serbia	Filcheva-Ermenkova		
21	08/11/15	Moscow Hotel, Belgrade, Serbia	Meeting with Rastko Brajkovic - Danish Refugee Council [(formerly of the Project for Further Support to Refugees and Internally Displaced Persons in Serbia, (Europaid/129209/C/SER/RS)]	Magda Mierzewska, Katja Dominik, Elka Filcheva-Ermenkova	John Ryan, Joanna Marszalik, Paul Landers & Katica Kovacevic	