



**European Union**

**Human Rights Review Panel  
Kosovo**

**Annual Report**

**1 January to 31 December 2016**

**Human Rights Review Panel - Secretariat**  
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## Foreword

This is the seventh Annual Report of the Human Rights Review Panel, (Panel) which covers the period from 1 January 2016 to 31 December 2016, presented to the public with a view to disseminating information on the developments in the Panel's case law. During the reporting period the Panel conducted three sessions and engaged in a number of external meetings and public outreach campaign activities. It is interesting to note that despite the Mission's limited executive mandate, an influx of new cases submitted to the Panel continued throughout the year.

The Panel issued a number of important decisions and recommendations in relation to "enforced disappearances" which had occurred during the armed conflict in 1999-2000. They resulted from the review of cases that involved allegations of inadequate investigation by EULEX Kosovo in connection with abductions, disappearances and killings. The cases concerned alleged breaches of procedural obligations arising under Article 2 (Right to life) and Article 3 (Prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights (the Convention).

In these opinions the Panel expanded its extensive case-law, especially with regard to certain novel issues which arose in a number of these cases. Its growing jurisprudence was consolidated with due regard to the international standards for human rights protection as enshrined in the case law of the European Court of Human Rights (ECtHR) and other international bodies, including the United Nations' Human Rights Committee.

The inability of the Panel to recommend, upon a finding of a violation, an appropriate compensation to victims, provided for by the original legal framework under which the Panel was created in 2008 (see chapters 2.1 and 1.2 below), continues to be problematic. It is often the case that complainants specifically seek compensation in cases of the disappeared persons", (eg *Sadiku-Syla against EULEX*, Case No. 2014-34, Decision on Admissibility, 29 September 2015). Whilst victims take some solace from the fact that their allegations of violations have been vindicated by the Panel, this is patently inadequate in itself. This situation is compounded by the fact that the Panel's recommendations to issue apology or give acknowledgment of a violation are not followed by the Mission.

That said, the Head of EULEX Kosovo (HoM) EULEX and his/her staff continued with the excellent cooperation which they extended to the Panel throughout the reporting period. This included a timely submission of replies or observations in the cases communicated to the Mission. The Panel appreciates, in particular, the provision of documents relating to the substance of the cases under examination, including police reports and other materials which relate to investigations of murdered and missing persons.

I would like to avail of this opportunity to express my appreciation to the HoM for his/her cooperation in the implementation of the recommendations contained in the Decisions of the Panel.

In 2016 the Panel continued with its practice of meeting with senior EULEX and European Union officials and others. The Panel also met with the European Union Special Representative (EUSR) at the EUSR HQ on 17 October 2016.

I attended meetings in Brussels with inter alia, the Chairperson of Civilian Planning and Conduct and Capability (CivCom); European External Action Service (EEAS), the Deputy Civilian Operations

Commander/Chief of Staff, the CivCom Desk Officer, Kosovo, EEAS as well as the representatives of the Member States of the CivCom Working Group, in Brussels on 28 September, 2016.

The Panel lost the services of its long serving Member, Ms Katja Dominik, and of two legal officers and an administrative assistant in 2016. The staff reductions through the reconfiguration process caused major problems for the Panel in relation to continuity in work as it seriously reduced its case-processing capacity as well as entailed a loss of institutional memory.

I would like to express my gratitude to Ms Katja Dominik who resigned as the EULEX Kosovo Member of the Panel on 14 June, 2016. I avail of this opportunity to thank Ms Dominik for her outstanding professional contribution to the work of the Panel during her four years of dedicated service and to wish her every success in her new assignment as the Head of the Executive Division, EULEX.

I also wish to congratulate Ms Elka Ermenkova, Criminal Judge of the Supreme Court/Appellate Court, Pristina and EULEX Kosovo on her appointment as the EULEX Kosovo Member of the Panel on 14 October, 2016. Similarly, I congratulate Ms Anna Bednarek, Appeals Judge, Kosovo Property Agency Appeals Panel, Pristina who was appointed as the EULEX Kosovo Substitute Member of the Panel on 14 October, 2016.

I would also like to take this opportunity to welcome our new Legal Officer, Ms Noora Aarnio, formerly Legal Officer, Court of Appeals/Supreme Court of Kosovo, to her new assignment with the Panel and to wish her every success in her new position.

The Panel's Legal Officers, Paul Landers, Joanna Marszalik and Administrative Assistant/Language Assistant, Shpresa Gosalci, completed their assignments with the Panel on 16 August, 30 September and 14 November respectively. I also avail of this opportunity to thank them most sincerely for their contributions to the work of the Panel and to wish them continued success in their careers.

Magda Mierzevska  
Presiding Member  
Human Rights Review Panel

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## 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 of its kind that deals with alleged violations of human rights by a European Union Common Security and Defence Policy Mission with executive authority.

Together with the Human Rights Advisory Panel of the United Nations Interim Administration in Kosovo (UNMIK), it is one of only two international panels that have ever been mandated to hold international organisations, operating in an executive role, accountable for alleged human rights violations. The UNMIK Human Rights Advisory Panel completed its mandate on 30 June, 2016 which means that this Panel is now the only human rights accountability body of its kind in operation.

The Panel, based on experience to date, effected improvements to its operations and case management through improved procedures, practices and mechanisms during the reporting period. These included, inter alia, increased use of electronic means to facilitate better communications between the Panel and the Secretariat during the intervals between sessions.

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

Despite its best efforts, the public outreach campaign activities, public awareness of the mandate, procedures and operations of the Panel in the EULEX Kosovo area of operations remains a concern. The Panel will focus on this problem in its public outreach activities in 2017, inter alia, with the continuation of the TV information campaign which was successfully launched in 2014.

Nevertheless, the Panel continues to add value to the wider EULEX Kosovo mandate, inter alia, in the provision of meaningful legal remedies, support and assistance to members of the public at large as well as to provide a good example for state institutions in the protection of human rights in Kosovo. The Panel is a clear signal that the Mission takes its human rights responsibilities seriously and, in subjecting itself to the competence of the Panel, sends an important example of power, subject to accountability.

In the course of the year, the Panel received thirty six (36) new complaints and reviewed nineteen (19) cases in 2016. The Panel found that EULEX had committed human rights violations in nine (9) cases. It also found that nine (9) cases were inadmissible and it struck out one (1) case.

The violations of rights imputable to the Mission related to alleged inadequate investigations in Case nos.: 2014-11 to 2014-17, D.W., E.V., F.U., G.T., Zlata Veselinovic, H.S. and I.R. Against EULEX as well as in Case no. 2014-34 Rejhane Sadiku-Syla Against EULEX.

The Panel found in those eight cases that EULEX Kosovo had violated the rights of the Complainants as guaranteed by Article 2, Right to life, Article 3, Prohibition of torture and inhuman or degrading treatment as well as Article 13, Right to an effective remedy in conjunction with Article 2 of the European Convention of Human Rights.

The Panel found in Case no. 2014-37 Y.B. Against EULEX that EULEX had violated the Complainant's rights under Article 8, Right to respect for private and family life. The Panel found eight cases to be inadmissible based on Rules 25 (1); 25 (3) and 29, Rules of Procedure.

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

## **2. Regulatory Framework**

### **2.1. Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission 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 Kosovo 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 independent, 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 Disciplinary Mechanism.

Thus, the Accountability Concept laid down the *mandate* of the Panel to: *review complaints from any person, other than EULEX Kosovo personnel, claiming to be the victim of a violation of his or her human rights by EULEX Kosovo in the conduct of the executive mandate of EULEX Kosovo.*<sup>1</sup>

However, pursuant to the Accountability Concept, the Panel does not have jurisdiction in respect of the 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, (footnote & Jurisprudence).

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 on 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:

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

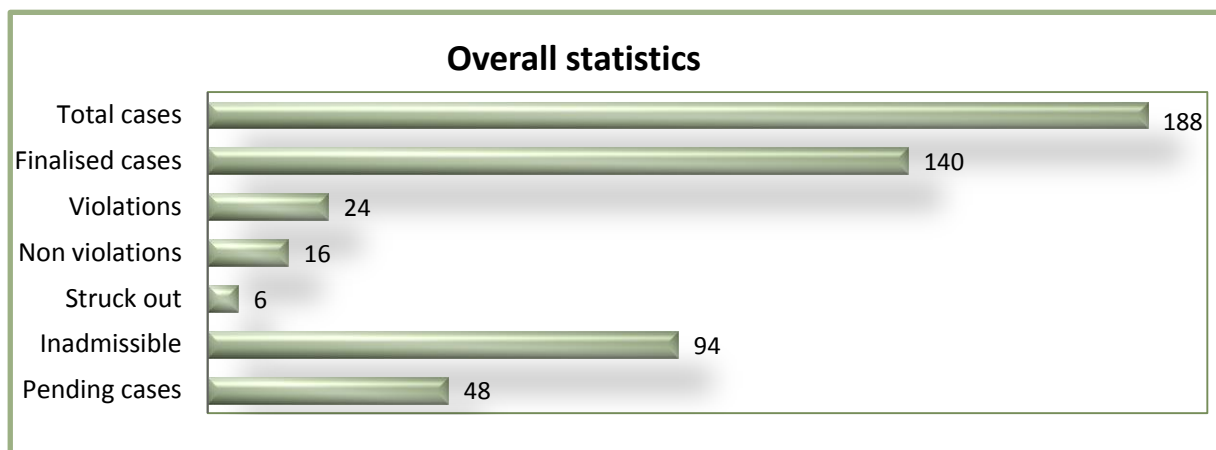
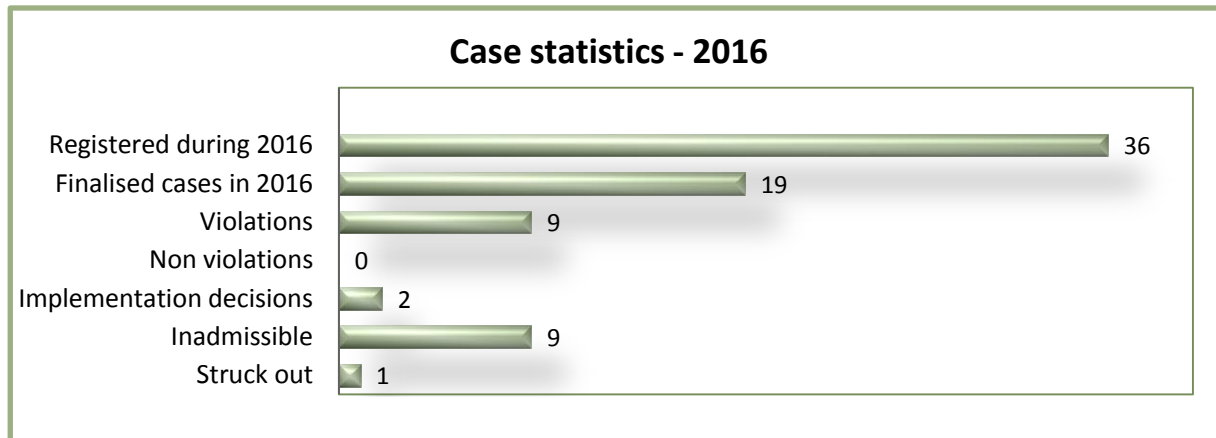
- The Universal Declaration on Human Rights (1948)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention, 1950)
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965)
- The International Covenant on Civil and Political Rights (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 complaints also relied upon the Universal Declaration on Human Rights, International Covenants and other human rights instruments.

### 3. Caseload and subject matter of complaints

#### 3.1. Caseload and statistics

The Panel received thirty six (36) new complaints and reviewed nineteen (19) cases in 2016. The Panel found that EULEX had committed human rights violations in nine (9) cases. It also found that nine (9) cases were inadmissible and it struck out one (1) case.



### 3.2. Trends

The vast majority of the Complaints filed against EULEX in 2016 concern alleged EULEX Prosecutorial failures to properly investigate or a refusal to institute investigations in cases of murdered and missing persons, i.e. “enforced disappearance” cases.

The Panel applied relevant standards of human rights pertaining to the cases of “enforced disappearance” in the specific context of a rule of law mission and evaluated how, in these particular circumstances, existing obligations of the State (in particular as regards the investigation of such cases) could be transferred into a situation involving a rule of law mission.

It may be noted that, in the context of cases of “enforced disappearances”, that victimhood, the status of “victim” for the purpose of proceedings before the Panel in such circumstances was not confined to the “disappeared”. The term “victim” also was interpreted to include the close relatives of the murdered and or missing, who suffer endlessly from the ongoing trauma of not knowing and/or not being unable to determine the fate of their loved family members.

The Panel has further continued to refine its approach to the application of human rights standards to a rule of law mission and defined some of the boundaries of that exercise. Whilst EULEX Kosovo, as a rule of law mission, is not of course a State, the Panel has emphasised that its very mandate necessitates in principle strict adherence on its part with basic human rights standards.

### 3.3. Subject matter of complaints

The most common types of alleged human rights violations examined by the Panel in 2016 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 to 2014-17; [\*L.O. against EULEX\*](#) no. 2014-32; [\*Sadiku-Syla 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 to 2014-17; [\*L.O. against EULEX\*](#) no. 2014-32; [\*Sadiku-Syla 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; [\*Kaçiu against EULEX\*](#) no. 2014-26; [\*Shabani 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-Syla against EULEX](#) no. 2014-34; [Y.B. against EULEX](#) no. 2014-37;
- 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 to 2014-17; [L.O. against EULEX](#) no. 2014-32; [Sadiku-Syla 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): [Beqolli 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 other international human rights instruments, in particular the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

## **4. Jurisprudence**

### **4.1. Introduction**

The Panel issued a number of important decisions in relation to cases which concerned the alleged lack of adequate criminal investigations with regard to disappearances, abductions and killings, in accordance with the procedural obligations which arose under Article 2 of the European Convention on Human Rights (Convention) and alleged violations of Article 3 of the Convention with respect to the inhuman and degrading treatment of family members and other close family connections of the victims.

These complaints introduced some novel issues that had not been reviewed heretofore in the jurisprudence of the Panel. By extension, the complaints encompassed circumstances and issues which were not encountered before by international human rights accountability mechanisms such as the Panel. In order to address those complaints, the Panel conducted an extensive review of the case law of other human rights bodies and applied it to the peculiar circumstances of the Mission.

In most cases, the European Convention on Human Rights Convention and the European Court of Human Rights' case law constituted the primary basis for the reasoning and decisions of the Panel. The jurisprudence so developed may be deemed to be a material contribution by the Panel to the development of international standards in human rights protection.

The bulk of the complaints received by the Panel in 2016 also concerned similar issues of the "enforced disappearances" and the Panel will continue with the development of its jurisprudence as it reviews these cases in 2017.

## **4.2. Background**

The missing and murdered person's cases, i.e. "enforced disappearance" cases, considered in this section of the report, came about as a result of the armed conflict which occurred in Kosovo in 1999, in particular, in the aftermath of the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK), on 10 June, 1999.

The armed conflict which took place between the Serbian forces and the Kosovo Liberation Army (KLA) as well as other Kosovo Albanian armed groups was well documented at that time. The Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia, (FRY) on 23 March 1999 pursuant to the failure of international mediators to resolve the conflict.

The NATO air strikes commenced on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June, 1999, the International Security Force (KFOR) and the FRY signed a "Military Technical Agreement" by which they agreed on FRY withdrawal from Kosovo and the deployment of an international security force. The enabling UN Security Council Resolution 1244 was adopted on 10 June, 1999.

### **Chapter VII of the United Nations Charter**

Acting under Chapter VII of the UN Charter, the use of force, the UN Security Council decided upon the deployment of an international security and civil presence in Kosovo composed of KFOR and UNMIK. Pursuant to Security Council Resolution, UNMIK was vested with full legislative and executive powers for the interim civil administration of Kosovo which included the administration of justice.

KFOR was tasked with the establishment of "a secure environment in which refugees and displaced persons could return home in safety" and temporarily ensuring "public safety and order" until the international civil police component could assume this responsibility.

UNMIK was comprised of four main components led by the United Nations, (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance), (phased out in June 2000), the Organisation for Security and Cooperation in Europe, (OSCE), (institution building) and the European Union (EU), (reconstruction and economic development).

Each pillar was placed under the authority of the United Nations Special Representative of the Secretary General, (SRSG). Notably, the aforementioned UN Security Council Resolution, inter alia, authorized UNMIK to: "promote and protect human rights" in Kosovo in accordance with internationally recognised human rights standards.

## **Internally displaced persons**

It is estimated that between 800,000 and 1.45 million Kosovo Albanians were displaced during the armed conflict. Following the adoption of Security Council Resolution, the majority of Kosovo Albanians who had fled, or had been forcibly expelled by the Serbian forces, returned to Kosovo.

Meanwhile Serbs, Roma and Slavic Muslims, as well as Kosovo Albanians who were suspected of collaboration with the Serbian authorities were attacked by the Kosovo Liberation Army and Kosovo Albanian armed groups. Estimates related to the number of Kosovo Serbs who were displaced range from 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and to neighbouring countries, those Serbs who remained in Kosovo were the alleged victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.

It is estimated that more than 15,000 deaths or disappearances occurred during, and in the immediate aftermath of the armed conflict from 1998 to the end of 2000. In excess of 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities disappeared during this period. More than half of the missing persons were located and their mortal remains were identified by the end of 2010. However, some 1,653 persons were still listed as missing by the International Committee of the Red Cross (ICRC) in May, 2015.

## **Deployment of UNMIK**

Meanwhile the UNMIK Special Representative of the Secretary General, (SRSG), urged the UN member States to support the deployment of the civil administration component of UNMIK, inter alia, to restore law and order in July 1999. This included an international police force that was tasked with the provision of advice to KFOR on policing matters until such time as they had sufficient resources to assume responsibility for law enforcement.

The introduction of the UNMIK Police component was almost completed by December, 2000 with the deployment of some 4,400 personnel, at which point UNMIK assumed responsibility for law and order in Kosovo, with the exception of Mitrovicë/Mitrovica region. The UNMIK Police, somewhat inexperienced in the police role in a post conflict situation, were confronted with a high crime rate which reportedly amounted to 351 kidnappings, 675 murders and 115 rapes from June 1999 until December 2000.

With regard to justice, UNMIK established an Emergency Justice System to deal with the law and order lacuna in June, 1999. This was composed of a small number of local judges and prosecutors and this system operated until a regular justice system was established in January, 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region, and thereafter throughout Kosovo. As of October 2002, the local justice system was comprised of 341 local judges and prosecutors and 24 international judges and prosecutors.

## **Missing persons**

As regards missing persons, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in July 1999. As a result, a Missing Persons Unit (MPU) was established within UNMIK Police, which was mandated to investigate the possible location of missing persons and/or gravesites in November 1999. The MPU, jointly with the Central Criminal Investigation Unit, (CCIU), UNMIK Police, and later

a dedicated War Crimes Investigation Unit (WCIU), were responsible for the investigation of the cases of missing persons.

In May 2000, a Victim Recovery and Identification Commission was established to recover and identify the remains of victims and a Bureau for Detainees and Missing Persons, (BDMP), was established within the Office of the SRSG with responsibility for the centralisation of information on missing persons.

On 5 November 2001, UNMIK signed the UNMIK/Federal Republic of Yugoslavia Common Document which reiterated, among other things, its commitment to solving the fate of missing persons from all communities, and recognizing that the exhumation and identification programme was only one of the initiatives which related to missing persons.

As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority which was mandated to determine the location of the missing persons, identify their mortal remains and return them to their families. All the information that was collected by the BDMP was transferred to the OMPF.

### **Establishment of EULEX Kosovo**

On 9 December 2008, the executive mandate of UNMIK was transferred to EULEX Kosovo. This handover of executive power followed a Statement by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), which, inter alia, welcomed the continued engagement of the European Union in Kosovo.

On the same date, UNMIK and EULEX Kosovo signed a Memorandum of Understanding on the modalities, and the respective rights and obligations which arose from the transfer of the executive authority from UNMIK to EULEX of the UNMIK cases and the related case files. These cases involved ongoing investigations and prosecutions which had been undertaken up to that time by UNMIK International Prosecutors.

Shortly thereafter, similar agreements were signed with regard to the files which had been dealt with by UNMIK international judges and UNMIK Police. These agreements obliged UNMIK to provide EULEX with access to the documents related to the actions previously undertaken by the UNMIK police and justice component. All criminal case files held by the UNMIK DOJ and UNMIK Police were thus to be handed over to EULEX between 9 December 2008 and 30 March 2009.

## **4.3. Decisions on Merits**

### **Murdered and missing persons – enforced disappearances**

**Case nos: 2014-11 to 2014-17, [D.W., E.V., F.U., G.T., Zlata Veselinovic, H.S. and I.R., respectively, Against EULEX](#)**

The seven (7) complaints in these cases relate to the murders of persons of Serb ethnicity which occurred in Kosovo between 16 June 1999 and 11 March 2000. In view of the considerable similarities that existed between the issues raised in the complaints, the Panel decided to order the formal joinder of the cases in accordance with Rule 20 of the Rules of Procedure (ROP) of the Panel.

The Complainants were represented by Ms Jovanka Stojisavljevic-Savic, Savic & Co Solicitors, 39 Warren Street, London W1T 6AF.

The HoM, in his observations on the merits of the cases, responded to the Panels question as to whether EULEX Prosecutors would be competent to prosecute cases pursuant to the “exceptional circumstances” of Article 7(A) of the amended Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo of 23 April, 2014.

### **Factors considered in the determination of “exceptional circumstances”**

The Panel in its Decision on the merits of the complaint, in relation to the applicable law, stated that the following factors, inter alia, would apply in the evaluation of the relevant facts of the case in the determination of what constituted “exceptional circumstances”:

Firstly, the Panel must consider if an effective investigation of the case had been conducted up to that time. A negative answer would militate in favour of EULEX Prosecutors exercising their “exceptional” competence. The Panel determined that the cases subject to the complaints had not been the subject of a full and effective investigation by any one entity, for any significant period of time.

Secondly, the Panel held that due regard had to be paid to the question of whether the matters complained of relate to important fundamental rights and that the alleged human rights violations are of extreme gravity. Such considerations would again weigh in favour of the “exceptional” involvement of EULEX Prosecutors. In this regard, the cases under review all concerned a series of important fundamental rights, including the right to life.

Also, the Panel was satisfied that there was a strong possibility that these crimes and the accompanying human rights violations were based on inter-ethnic or religious considerations thereby pointing further to the jurisdictional competence of EULEX Kosovo. The Panel stated that such cases should be obvious investigative priorities in a post-conflict environment in which inter-ethnic and religious relationships may be tense and fragile. The Panel concluded that this factor did not seem to have been taken into consideration by EULEX Kosovo in its determination of “exceptional circumstances”.

Lastly, the Panel noted that if the EULEX Prosecutors decided not to exercise their “exceptional” competence in relation to those cases, the question then arose as to whether or not there was a genuine and real prospect that the Kosovar authorities might carry out their investigative responsibilities in relation to them. The Panel stated that there was no indication that this would be the case or that appropriate actions were taken in order to establish the facts in this regard.

### **Recommendations of the Panel**

Panel therefore recommended that the HoM should, inter alia, communicate the decisions and findings to all the relevant investigative and prosecutorial organs of EULEX Kosovo and that **he** impress upon them the importance of cases of disappearance continuing to be an investigative priority of EULEX to ensure that such cases were fully and effectively investigated.

The HoM was also invited to draw to the attention of the competent investigative and prosecutorial authorities within EULEX Kosovo to the factors listed above as being relevant to the evaluation the “exceptional” competence of EULEX prosecutors under the said Article 7(A) and to

further impress upon them the importance of taking these factors into account in their assessment of whether or not they should seek to take responsibility for these cases.

The Panel also stated that it anticipated that a review of these cases would be conducted in light of the parameters laid down in order to ensure that the investigative and prosecutorial authorities took a legally sound and informed decision with regard to the need to investigate some or all of the cases.

### **Decision and recommendations**

The Panel found that the investigative efforts of EULEX Kosovo were insufficient in light in particular of the gravity of the violations of rights under consideration and that they therefore resulted in violations of the rights of the Complainants as guaranteed by Article 2, Right to life; Article 3, Prohibition of torture or inhumane or degrading treatment and Article 13, Right to an effective remedy in conjunction with Article 2 of the Convention. The Panel also submitted a number of recommendations to the HoM as outlined earlier above.

### **Case no. 2014-34, [Rejhane Sadiku-Syla Against EULEX](#).**

#### **Decision on merits - Articles 2, 3 and 13 of the Convention**

Mr Sylë Sadiku, the father of the Complainant, disappeared from his residence in northern Mitrovicë/Mitrovica, in the course of an attack by a group of armed persons, believed to be of Serb ethnicity on 7 December 2000. The attack was witnessed by a sister of the Complainant who was later evacuated by French KFOR troops. The Complainant received no information whatsoever on the whereabouts and fate of her father since he disappeared.

The Complainant in this case was represented by Mr Kushtrim Istrefi, 12 Rue de L'école de Medicine, 1205 Geneva, Switzerland.

#### **Submissions by the Complainant**

The Complainant submitted that EULEX had violated her rights pursuant to Articles 2 and 3 of the Convention under their procedural limb. In particular, it was submitted that EULEX Prosecutors failed to initiate an investigation in accordance with Kosovo law and the mandate of EULEX Kosovo, EULEX unduly delayed the investigative process and in the referral of the case to Kosovo prosecutors, neglected the seriousness of the case; the sensitive geographical location of the crime in northern Mitrovicë/Mitrovica; its war crime character and the inter-ethnic character of the crime.

#### **Submissions by the HoM**

The HoM in his response to the Panel's enquiry as to whether EULEX Prosecutors would be competent to prosecute the case pursuant to the "exceptional circumstances" of Article 7(A) of the amended Law on Jurisdiction, stated that the "exceptional circumstances" within the meaning of this provision were laid down in the Administrative Instruction on the Special Prosecution Office of Kosovo on the Description and Allocation of Tasks and the Manner of Cooperation between the Chief Prosecutor of SPRK and the (EULEX) Deputy Chief Prosecutor of SPRK in the Administration and Management of the SPRK, 2 October, 2014.

In accordance with Article 4.4 of the said Administrative Instruction, these exceptional circumstances included: “(unwillingness or inability on the part of the Kosovo Prosecutor); that the expertise and experience of the EULEX Prosecutor would ensure the proper investigation and prosecution of the case; that there was a grounded suspicion of attempts to influence the investigation or the criminal prosecution; and that the case under investigation touched upon the interests of the EU Member States or the EULEX staff in Kosovo.”

Where these requirements were satisfied, a detailed petition had to be addressed to the Chief State Prosecutor or the Chief EULEX Prosecutor, which highlighted the alleged extraordinary circumstances. The decision to apply Article 7(A) in a particular case was taken jointly by those two prosecutors and it was not the responsibility of the EULEX Prosecutor to decide on his own to take over the case.

### **Replies of the Complainant**

The Complainant, in her reply, dismissed the argument of the HoM that the case did not fall under the provisions of the said Article 7(A). She pointed out that the Kosovo Prosecution was neither willing nor able to investigate cases of enforced disappearances, as was acknowledged in the EU Progress Report on Kosovo, 2015. Conversely, the EULEX Prosecution had the necessary experience and expertise to ensure the proper investigation and prosecution of the case.

Furthermore, the Complainant argued that the nature of the case required that it be handled under Article 7(A), as it concerned “enforced disappearance”. The obligation to investigate such cases in accordance with Article 7(A) and to punish those responsible, both in times of war and peace, attained a status of *jus cogens*. It was thus important that the perpetrators were charged with “enforced disappearance” and not with any other criminal offence, such as abduction or murder.

### **The obligation to investigate - EULEX Kosovo**

The Panel, in its review of the merits of the case, noted that EULEX was not a State and that its ability to guarantee the effective protection of human rights could not be compared to what could be expected of a State.

The Panel also acknowledged the difficulties necessarily involved in the investigation of serious crimes in a post-conflict society such as Kosovo. The Panel noted that such a situation might well complicate the search for evidence, the protection of witnesses or the performance of certain investigative or forensic tasks. The fact that an investigation or prosecution took place in a post conflict situation could not however excuse and every investigative shortcoming unless those shortcomings were reasonably connected to particular difficulties associated with that situation.

The Panel further emphasised that EULEX, as a rule of law mission, was expected to pay particularly close attention to the need for the restoration, maintenance and reinforcement of the rule of law. “Enforced disappearance” was both a serious crime and a violation of human rights. It involved a multi-faceted type of violation of fundamental human rights, “in particular the right to life, liberty and security of person, the right not to be subjected to torture, freedom from arbitrary arrest or detention, and the right to a fair and public trial”.

The Panel noted that, over time, the prohibition of “disappearances” had come to be regarded as an independent, stand-alone guarantee which was binding on States as a matter of universally recognized fundamental rights. Victims of such acts were not limited to the disappeared, but could

also include close relatives of disappeared persons, who suffer from the infinite emotional trauma of not knowing the fate of their loved ones.

Consequently, the response expected of the authorities, in this instance EULEX, must be commensurate with the gravity of the alleged violation and the importance of the protected rights. In the case of disappearances, this would involve, in the normal course of events, an obligation on the part of competent authorities to diligently, promptly and thoroughly investigate such cases with a view to establish the fate of the (primary) victim and to prosecute, try and punish those who were found to be responsible.

### **The assessment of the Panel**

The Panel, applying the general principles outlined above, considered the merits of the complaint in two distinct phases: firstly, prior to the entry into force of the Law on Jurisdiction on 13 March, 2008, and secondly, after the amended Law came into force on 14 April 2014.

#### **Legal position before entry into force of the Law on Jurisdiction**

As regards the first period, the Panel reiterated the obligations of EULEX Kosovo to diligently record and, in turn, duly register grievances formally brought to its attention and to communicate those to the competent bodies within EULEX.

As already noted and as also stated in the admissibility decision, information in relation to the case was in the possession of EULEX from 2008 onwards. On that basis, the EULEX Kosovo should have ensured through proper organisation and communication between its various branches that information of this importance was communicated to the competent investigative authorities.

#### **Legal position after entry into force of the Law on Jurisdiction**

With regard to the second period, following the entry into force of the law which amended the Law on Jurisdiction, the Panel was of the view that the Law on Jurisdiction gave EULEX Prosecution the ability to apply an “exception” to the general principle that cases which were not considered ongoing at the cut-off date of 14 April 2014 were to be dealt with by the Kosovo authorities. This provision could result in undermining or qualifying the responsibility of EULEX to act at all times in a manner consistent with relevant human rights standards.

One of the considerations in the assessment of the existence of “exceptional circumstances” was whether or not an effective investigation had been conducted heretofore. A negative answer would militate in favour of EULEX Prosecutors exercising their “exceptional” competence. In the first instance, it was not argued, let alone shown, that this case was ever subject to an effective investigation for any significant period of time.

In addition, the Panel noted that it was relevant whether the case concerned important fundamental rights and violations of extreme gravity. Such considerations would again weigh in favour of the “exceptional” involvement of EULEX Prosecutors.

Ultimately, in this instance, the failure to ensure that information relevant to this case was transmitted from one organ of EULEX to another, the DFM, was said to be attributable to EULEX. This added weight to the suggestion that the circumstances of the case were “exceptional” within the meaning of Article 7(A) of the Law on Jurisdiction.



It was also noted that the law confers on EULEX Prosecution a discretionary power to take over cases which they consider “exceptional” in nature. The Panel acknowledged that it was not for the Panel to replace the EULEX authorities in the application of that requirement. However, it insisted that the discretion of the EULEX Kosovo must be exercised in a manner that is consistent with the effective protection of human rights.

The Panel concluded that, prima facie, the circumstances of this case could be regarded as falling within the ambit of the “exceptional circumstances” provision of Article 7(A) of the amended Law on Jurisdiction and that EULEX would therefore have been competent, in principle, to investigate the case after the amendment of the said Law. For these reasons, the Panel found that the violation of the rights of the Complainants by EULEX continued even after the amendment of the said Law because of the failure of EULEX to consider the case under this provision.

### **Decision and recommendations**

Having regard to the circumstances of the case, seen as a whole, the Panel found that the investigative efforts of EULEX were insufficient and thereby resulted in a violation of the rights of the Complainant as guaranteed by Articles 2 and 3 of the Convention in respect of the right to life and the prohibition of torture and by Article 13, the right to an effective remedy, in conjunction with Article 2 of the Convention.

Given its findings with regard to Articles 2, 3 and 13 of the Convention, the Panel considered that it was not necessary to further examine the case under Article 8 of the Convention and submitted number of remedial recommendations to the HoM.

### **Case no. 2014-37, [Y.B. Against EULEX](#)**

#### **Decision on Merits – Article 8 of the Convention**

The facts of this case were that Y.B., the Complainant, was listed in an indictment by a EULEX Prosecutor of the Special Prosecution Office of the Republic of Kosovo (SPRK) on 4 July 2014. The indictment was filed in the Basic Court, Pristina against N.K. who was charged with organised crime, aggravated murder and drugs offences.

#### **Alleged violations of Articles 6, 8, 10 and 11 of the Convention**

The Complainant submitted that the actions of the EULEX Prosecutor constituted a violation of his right to private life under Article 8 of the Convention which encompassed a person’s reputation. EULEX was therefore said to have breached Article 8: Right to respect for private and family life. Y.B. further submitted that, by alleging in public that he was a part of a criminal organization, the EULEX Prosecutor violated Article 6 (1), (2) and (3) of the Convention. Y.B. further submitted that EULEX violated his right to participate freely and fairly in democratic elections in the destruction of his dignity and reputation and, consequently, his political career. Y.B. thereby also invoked Articles 10 and 11 of the Convention.

#### **Submissions by the HoM**

The HoM, in his submissions, acknowledged that the Complainant, together with other individuals, had been named in the indictment as being suspected of participating in an organised criminal group. However, nowhere had it been said that he was a defendant or that he had been charged with any criminal offence, he had merely been given a witness status in the case.

When referring to the Complainant in the indictment, the EULEX Prosecutor had found it essential to refer to individuals other than N.K., in order to ensure that the court knew all the facts and the roles of those individuals in the crimes with which he was charged. Given the Complainant's relationship with N.K, it would be impossible for the prosecutor to present evidence without a reference to the Complainant's name in the indictment and during the trial.

### **Replies of the Complainant**

Y.B., the Complainant, in his replies, maintained that the indictment had been littered with personal attacks of such gravity as to compromise his personal integrity. He further argued that neither the references to him as a co-perpetrator, nor references to his wife's alleged personal relationship, served a legitimate aim of carrying out an effective investigation, within the meaning of Article 8 of the Convention.

Simply because the evidence was relevant, did not mean that it had to be pleaded in the indictment. Even if it was presented in court, there was no necessity for the EULEX Prosecutor to mention full names of un-indicted co-perpetrators. Nothing would have prevented him from the use of pseudonyms, which was a widespread practice in serious criminal proceedings. Moreover, an alleged motive for the crime was not a relevant material fact that had to be pleaded in the indictment.

Y.B. submitted that none of the interferences by the Prosecutor with his private life served the legitimate aim in a proportionate manner. Even if one should accept the legitimacy of the aim to undertake a criminal investigation with subsequent prosecution for murder, this did not mean that the interference with the rights of Y.B was necessary in these circumstances.

Y.B. also maintained that the right to the preservation of one's reputation called for protection far stronger than that advanced by the HoM, as apparent from the case law of the ECtHR. The Complainant's name was mentioned in the indictment just as he announced his participation in the presidential elections, thereby causing far greater damage to his reputation.

### **The assessment of the merits by the Panel**

The Panel in its assessment of the merits reiterated that, consistent with the case law of the ECtHR, a person's reputation constituted part of the right to respect for private life, and was therefore protected by Article 8 of the Convention.

### **Conditions for the invocation Article 8 of the Convention**

The Panel observed that for Article 8 of the Convention to come into operation, the attack on a person's honour and reputation must attain a certain level of gravity. The Panel stated that there were a number of previous cases which concerned statements which were made in a course of an investigation or judicial proceedings where the Court found that there was an interference with the right to a private life of the applicant.

As to the question of whether the interference was "in accordance with the law", in accordance with Article 8(2), the Panel observed that this aspect had not been questioned either by the parties or by the Basic Court, Pristina in its ruling of 4 December 2014. The Panel therefore saw no reason to believe otherwise.

The task of the Panel was to determine whether the interference served a legitimate aim and whether it struck a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. With regard to Article 8(2), the Panel accepted that the interference pursued one of the legitimate aims enumerated in Article 8(2), notably the prevention of disorder or crime. The question remained, therefore, as to whether a fair balance has been struck between the competing public and private interests.

The HoM, in his submissions, argued that the naming the Complainant in the indictment was essential in order to present the Basic Court with all the facts as well as to launch an effective prosecution of N.K. The Panel was not persuaded by those arguments. The Panel acknowledged that it might have been impossible to indict N.K. on the charge of organised crime and to argue the case against him without reference to the other persons who were involved.

Nonetheless, from the wording of the indictment, it appeared that, without it serving any purpose in the case against N.K., the EULEX Prosecutor made an assertion of fact that Y.B. had committed a serious crime. Additionally, it was not made clear in the indictment that Y.B. was not, in fact, a suspect in the case and that there were no criminal proceedings pending against him. On the contrary, he was named in no uncertain terms as a “co-perpetrator” and as a “gang boss”. These statements, in the decision of the Panel went much further than the mere description of a state of suspicion.

The Panel observed that the above portrayal of Y.B. in an authoritative prosecutorial act, and in a manner which indicated rather certainty than possibility or suspicion by the EULEX Prosecutor, was capable of stigmatizing him and of having a major impact on his personal life and reputation.

### **Decision and findings**

In the light of the above, the Panel found that the interference with the right of Y.B. to respect for his private life was not sufficiently justified in the circumstances and, as such, it was disproportionate to the legitimate aims pursued by the EULEX Prosecutor. Accordingly, the Panel found that the interference by the EULEX Prosecutor gave rise to a violation of Article 8 of the Convention and made a number of recommendations to the HoM.

#### **4.4. Decisions on admissibility**

The Panel addressed various important issues of admissibility in the following decisions:

##### **Murdered and missing persons**

**Case nos: 2014-11 to 2014 -17, D.W., E.V., F.U., G.T., [Zlata Veselinovic, H.S. and I.R., respectively, Against EULEX.](#)**

**Compliance with the six month rule - Complaints must be submitted within six months from the date of the alleged violation, Rule 25 (3) Rules of Procedure**

The seven (7) complaints in these cases relate to the murders of persons of Serb ethnicity which took place in Kosovo between 16 June 1999 and 11 March 2000, (See also Page 12 above).

### **Submissions by the HoM on admissibility - Case nos. 2014-11 and 2014-13**

The HoM challenged firstly the admissibility of case nos. 2014-11 and 2014-13 and stated that the Panel lacked jurisdiction, *ratione temporis*, on the basis that there had not been a sufficient temporal connection between the underlying conduct of the concerned parties and the filing of the complaints.

### **Observations by the Panel on admissibility - Case nos. 2014-11 and 2014-13**

The Panel rejected the argument of the HoM for the following reasons:

Firstly, the Panel noted that the complaints pertained not to the actual killings of the Complainants' relatives but to what it considered to be an on-going failure to fully and effectively investigate their cases. In that sense, the complaints pertained to alleged violations of the procedural limbs, as opposed to substantive limbs of Articles 2 and 3, in addition to violations of Articles 8 and 13 of the Convention.

Secondly, the Panel noted that the Complainants did not desist in the pursuit of their claim. They solicited the assistance of various authorities, domestic and international, including UNMIK, the British Government and various branches of EULEX, which they thought could help them to obtain the relevant information.

Thirdly, the Panel noted that, even though no investigations in the cases at issue were pending at the time and the competence of EULEX Prosecutors to investigate may have been limited under the legislative amendment of the Law on Jurisdiction, EULEX was nonetheless involved in the investigation of these matters.

Based on the above, the Panel was of the view that it had jurisdiction, *ratione temporis*, over the cases as there existed a "genuine connection" between the alleged violation of the rights of the Complainants and the jurisdiction of the Panel.

### **Submissions by the HoM on admissibility - Case nos. 2014-12, 2014-14, 2014-15, 2014-16 and 2014-17**

The HoM, also challenged the admissibility of cases nos. 2014-12, 2014-14, 2014-15, 2014-16 and 2014-17, *ratione materiae*, based on the premise that they were not within the competence of EULEX Prosecutors. Thus, no act or failure to act that contributed to the violation of the rights of the Complainant could be imputed to EULEX Kosovo.

### **Decisions of the on admissibility - Cases nos. 2014-12, 2014-14, 2014-15, 2014-16 and 2014-17**

The Panel did not agree with this analysis by the HoM and as a preliminary matter, noted that these complaints did not relate to an act or failure to act by KFOR or UNMIK, but rather to acts which were said to be attributable to EULEX. The Panel reiterated that its competence was limited to those alleged acts and omissions that were attributable to EULEX in the exercise of its executive mandate.

The Panel firstly noted, with regard to its competence, *ratione materiae*, that the HoM's submissions already acknowledged that EULEX Prosecutors enjoy a general competence over the types of cases underlying these complaints. The Panel also took note of the acknowledgement of the HoM of the importance of the rights guaranteed under Articles 2 and 3 of the Convention, as

were alleged to have been violated in this case: ... “EULEX is committed to ensuring that all of its activities respect international standards of human rights” and recognizes “the fundamental character and importance of the rights protected under Articles 2 and 3 of the Convention as well as the procedural obligations related to those rights”.

In relation to the Mission’s competence to investigate these particular cases, the Panel noted that Article 5 of the Law on Jurisdiction provided for the exclusive competence of EULEX Prosecutors to investigate and prosecute, among others, war crimes and crimes against humanity. Whilst there could be some debate as to whether crimes committed in the aftermath of an armed conflict could qualify as war crimes, it was noted that there was no dispute that they could legally amount to crimes against humanity. On that basis already, the Panel determined that these crimes would have come within the competence of EULEX Prosecutors based on Article 5 of the said Law on Jurisdiction.

Moreover, Article 8 of the Law on Jurisdiction pertaining, inter alia, to kidnapping and murder as well as Arts 11 and 12 of the Law on Jurisdiction concerning hate-motivated crimes would have provided an alternative legal basis for EULEX prosecutors to investigate these cases. This in fact, was conceded in the response of the HoM, who noted that EULEX prosecutors would have had shared competence over cases which could not be considered war crimes but which would fall under regular chapters of the Kosovo Criminal Code.

In the decision of the Panel, the provisions cited above clearly provided a sufficient legal basis to give EULEX Prosecutors, exclusive or shared, competence to investigate the cases. It was said that the Mission’s obligation to investigate these cases arose not from these provisions which set out the EULEX Prosecutors’ jurisdictional competence over these cases, but rather from Articles 2 and 3 of the Convention, which mandated EULEX Kosovo to guarantee the effectiveness of these rights in the context of its executive mandate.

The Panel also noted that the HoM claimed that the EULEX Prosecutors did not become competent to investigate these cases where the case file did not formally reach them. The Panel could not accept these submissions for at least two reasons:

The first reason was that it was the responsibility of EULEX Kosovo to ensure that it was organised so as to guarantee the effective protection of human rights in the exercise of its executive mandate. The Panel had already noted in earlier cases that a mission such as EULEX was expected to organise its records and the transfer thereof so as to guarantee, in all circumstances, the effective protection of the rights of those concerned with, or affected by those files.

The second reason was that the effective protection of these rights could not depend on the particular arrangement put in place by UNMIK and EULEX with regard to the transfer of case files. The Complainant duly informed EULEX of the existence of these cases. From the point of view of human rights law, the responsibility of EULEX to investigate these cases did not and could not depend on the formal submission to EULEX of a “live” case file by UNMIK. It was the responsibility of EULEX to effectively review and investigate these cases when they were brought to its notice.

#### **Applicable law – in “exceptional circumstances” - Article 7(A)**

In its review of the applicable law, as in the Veselinovic case, (above), the Panel stated that the following factors, inter alia, would apply in the evaluation of the relevant facts in the determination of what constituted “exceptional circumstances”:

Firstly, the Panel must consider if an effective investigation of the case was conducted up to that time. A negative answer would militate in favour of EULEX Prosecutors exercising their “exceptional” competence. The Panel found that that these cases had not been the subject of a full and effective investigation by any one entity, for any significant period of time.

Secondly, the Panel said that it must consider if the matters complained of relate to important fundamental rights and that the alleged human rights violations were of extreme gravity. Such considerations would again weigh in favour of the “exceptional” involvement of EULEX Prosecutors. In this regard, the cases under review all concern a series of important fundamental rights, including the right to life.

Thirdly, if the EULEX Prosecutors decided not to exercise their “exceptional” competence, the question then arose as to whether or not there was a genuine and real prospect that the local authorities might carry out their investigative responsibilities. The Panel stated that there was no indication that this would be the case or that appropriate actions were taken in order to establish the facts in this regard.

The Panel noted that complainants were expected, in principle, to pursue the remedies available to them with some vigour and to lodge their complaints with due speed. In this particular case, the complainants did not seem to have taken any meaningful steps to pursue the various remedies that were available to them until 2013. The Panel noted that the Complainants had not provided any explanation for this delay.

#### **Assessment of admissibility by the Panel**

The Panel, in its determinations on admissibility stated, however, that there were four reasons that favoured further consideration of these cases:

Firstly, the rights involved in these cases were among the most important fundamental rights guaranteed by international human rights law and indeed some of them are absolute and allow for no exception.

Secondly, the competence of EULEX Prosecutors to investigate alleged violations of these rights was independent of any complaint filed by the victims or their relatives so that there was a legally-grounded expectation that they would investigate this case regardless of the actions of Complainant.

Thirdly, the thorough and effective investigation of crimes of this category was central to the creation of a sense of accountability and care for the rule of law in post conflict societies. The responsibility to deal with these cases belonged to society as a whole and not just to those most directly affected by these cases.

Fourthly, the Panel recalled that, in accordance with the established case law of the ECtHR, the six month period, within which to file a complaint, could be calculated from the time when the complainant became aware that his/her case was not being properly investigated by the responsible authorities. On that basis, the Panel considered that it was in the best interests of justice that it should consider the complaint in relation to its admissibility.

In addition, complaints nos. 2014-11 and 214-13 were lodged with the Panel on 11 March 2014. The Complainants received their last communications from the Special Prosecutor of the Republic of Kosovo, (SPRK), respectively on 20 September and 9 October 2013. The Panel opined that these

dates could fairly be regarded as the points in time from which the six month rule deadline started to run as it was from that date that the Complainants could unequivocally come to the realization that EULEX would not conduct an effective investigation into the deaths of their relatives.

### **Decision and findings**

For these reasons, the Panel declared that the complaint had been filed on time and found that the relevant jurisdictional requirements were satisfied so that the case could be declared to be admissible.

**Case no. 2014-34, [Rejhane Sadiku-Syla Against EULEX](#).**

### **Murdered and missing persons**

#### **Compliance with the six month rule - Complaints must be submitted within six months from the date of the alleged violation, Rule 25 (3) Rules of Procedure**

The victim in this case, Mr Sylë Sadiku, the father of the Complainant, disappeared from his residence in northern Mitrovicë/Mitrovica in the course of an attack by a group of armed persons, believed to be of Serb ethnicity on 7 December 2000, (See Page 14 above).

### **Submissions by the HoM**

The HoM submitted with regard to the admissibility of the complaint, that EULEX Prosecutors only became aware of the case when the Complainant made her inquiries in 2013. He further submitted that EULEX did not take any investigative steps in the case, as there was no open investigation within EULEX Police or Prosecution and that there was no open investigation file that had been transferred from UNMIK to EULEX Kosovo.

The HoM further commented on the competence of EULEX Prosecution to deal with the case. He submitted that, before the legislative amendments to the Law on Jurisdiction, EULEX Prosecutors would only have had shared or subsidiary competence over the case, should it have been classified as kidnapping, hostage taking or murder.

The HoM averred that as the incident occurred after the end of the conflict, the case could not be considered as a war crime, in which instance EULEX would have had exclusive competence. The HoM added that the amendments to the Law on Jurisdiction reduced the possibility for EULEX Prosecutors to exercise executive functions in new cases.

### **Observations of the HoM on admissibility**

The HoM submitted that the main task of EULEX was to support the Kosovo authorities whilst at the same time retaining some limited executive functions. Therefore, the responsibility of EULEX to protect human rights could not be equated with the responsibility of a state.

The HoM also submitted that the Panel was competent only to examine alleged violations of human rights by EULEX. Thus complaints which concerned actions or inactions of entities such as KFOR, UNMIK or indeed the Kosovo authorities, fell outside its competence.

Furthermore, the HoM submitted that the Panel should only examine complaints on alleged violations of human rights which occurred after 9 December 2009 and he pointed out that the

Complainant's father had disappeared in 2000. The HoM also submitted that the case was lodged outside of the six-month time limit as set out in the Rules of Procedure of the Panel.

### **Submissions by the Complainant**

The Complainant, in her replies to the submissions of the HoM, dismissed the argument that the disappearance of her father could not be considered to be a war crime. She quoted Article 1 of the Law no. 04/L-023 on Missing Persons in Kosovo, which stated that a person "reported missing during the period [between] 1 January 1998 [and] 31 December 2000" was considered to be a missing person "as a consequence of the war in Kosovo during 1998-1999".

As the Complainant's father disappeared prior to 31 December 2000, she submitted that there was a statutory presumption that his disappearance was sufficiently connected with the conflict in Kosovo constituted a war crime.

The Complainant concluded that, unless EULEX used all possible means at its disposal in order to comply with its obligation to investigate, the Complainant's rights under Articles 2 and 3 of the Convention, as well as the procedure before the Panel for the protection of those rights would remain theoretical and illusory.

The Complainant therefore requested the Panel to instruct EULEX to make use of Article 7 (A) of the Law on Jurisdiction, which referred to the possibility of a case being assigned to EULEX and other means available to investigate the case effectively. The Complainant also notably sought compensation for the harm done to her.

### **Assessment of the Panel (responsibilities of a state versus an international organisation)**

The Panel, as in the Veselinovic case (above), noted that EULEX Kosovo was not a State and that its ability to guarantee the effective protection of human rights could not be compared in all relevant respects to what may be expected of a State in its determination of the admissibility of this case. It also acknowledged the difficulties necessarily involved in the investigation of serious crimes in a post-conflict society such as that in Kosovo. Those difficulties however, should not serve to camouflage or explain failures that were not in any meaningful way connected with the shortcomings of an investigation.

The Panel acknowledged that the expectations placed upon the ability of EULEX to investigate and to resolve complex criminal cases should therefore be realistic. The Panel would therefore evaluate in each case whether or not there were concrete and real obstacles that might undermine the ability of EULEX to conduct a prompt and effective investigation

The Panel stated that in every case and in particular in a case as serious as this one, the investigative authorities were expected to act with reasonableness and expeditiousness and to invest resources commensurate with the necessity and possibility to resolve the case. In the present context, there could be little argument that investigating the fate of the disappeared, regardless of religion or ethnicity, must remain an operational priority for EULEX as a Rule of Law mission.

### **Submissions by the HoM**

The HoM further submitted that the Complainant had failed to comply with the six month rule which would appear to be based on a misunderstanding as to what exactly the complaint relates



to. Whilst the Complainant's father disappeared on 7 December 2000, the alleged violation of the rights which are relevant to the present complaint does not pertain to that event but rather to an alleged subsequent and ongoing, failure on the part EULEX to properly investigate the circumstances of that disappearance.

### **Decision of the Panel**

The Panel asserted that certain factors, as in previous cases, required it to consider this matter further:

Firstly, the rights involved were amongst the most important fundamental rights guaranteed by international human rights law, some of which are absolute and allow for no exceptions.

Secondly, the Panel pointed out that the competence of EULEX Prosecutors to investigate alleged violations of these rights was independent of any complaint filed by the victims or their relatives so that there was a legally grounded expectation that they would investigate this case regardless of the actions of the Complainant.

Thirdly, the Panel determined that the thorough and effective investigation of this category of cases was central in the creation of a sense of accountability for the rule of law in any post conflict setting. The responsibility to deal with these cases belonged to society as a whole and not just to those most directly affected by them. On that basis, the Panel considered that it was in the interests of justice that it should consider the complaint with regard to its admissibility.

### **Submissions by the HoM - *ratione temporis***

The HoM further submitted that the Panel lacked jurisdiction, *ratione temporis*, absent a sufficient temporal connection between the underlying conduct and the filing of the complaint. The HoM pointed to the fact that the Complainant's father disappeared a very long time ago and well before EULEX was established in 2008.

### **Decision of the Panel - *ratione temporis***

The Panel determined that the fact that the father of the Complainant died in December, 2000 would not necessarily mean that the Panel would not be competent to investigate this case. The conduct that was under scrutiny in this case, an alleged failure on the part of the EULEX Kosovo to investigate this case, is one that started at least in December 2013, if not earlier, and which was said to be on-going up to this point in time. In that sense, the Panel found that it fell within the temporal jurisdiction of the Panel.

### **Decision and findings**

Based on the above, the Panel was satisfied that there was a sufficient and genuine connection between the underlying conduct relevant to this case and the mandate of EULEX as well as the competence of the Panel. The Panel accordingly declared itself competent, *ratione temporis*, to consider the merits of the case.

### **Submissions of the HoM - *ratione materiae***

The HoM also challenged the admissibility of this case, *ratione materiae*, on the basis that this case did not come within the competence of EULEX Prosecutors so therefore no act or failure to act

could be imputed to EULEX that might have contributed to the violation of the rights of the Complainant.

#### **Decision of the Panel - *ratione materiae***

The Panel noted that the submissions of the HoM had already clearly provided for the fact that EULEX Prosecutors enjoyed a general competence over this type of case:

The HoM, in his earlier communications, had taken notice of the importance of the protection of the rights guaranteed by Articles 2 and 3 of the Convention as were alleged to have been violated in this instance; “EULEX is committed to ensuring that all of its activities respect international standards of human rights”, and recognizes “the fundamental character and importance of the rights protected under Articles 2 and 3 of the Convention as well as the procedural obligations related to those rights”.

The Panel also took note of the fact that the HoM had made it clear that, had new information become available to EULEX, it could have ‘activated’ this case, thereby implicitly acknowledging the general competence of EULEX over the case.

The Panel concluded that, leaving aside the question of whether this act could have qualified as a war crime, the conduct in question did, *prima facie*, bear indications that it was ethnically motivated so that it would have come within the realm of: “other serious crime” under article 3(d) of the 2008 Joint Action over which EULEX Prosecutors enjoy competence.

The Panel also noted that Article 8 of the Law on Jurisdiction which related to kidnapping, hostage-taking and murder as well as Articles 11 and 12 of the Law on Jurisdiction which relates to hate motivated crimes would have provided a valid legal basis for EULEX prosecutors to investigate this case.

#### **Further submissions by the HoM - *ratione materiae***

The HoM argued, nevertheless, *ratione materiae*, that these provisions did not: “establish an inherent obligation on EULEX Prosecutors to act”. However, the question here is not one of “obligation”, but rather the jurisdiction or competence of EULEX Prosecutors to investigate. And the legal provisions cited above clearly provided the legal basis which authorised the EULEX Prosecutors to investigate this case.

The HoM also raised another “exception” to the competence of EULEX Prosecutors, namely, the application of the statute of limitations over acts that would amount to kidnapping or hostage-taking. The statute of limitations over such acts appears to vary between 10 to 20 years, depending on the circumstances of the case, (Articles 106, 175 and 194 of the Criminal Code of Kosovo refer).

The HoM also submitted that the “new legislation” that entered into force on 17 May 2014 “considerably reduced the possibility for EULEX Prosecutors and Judges to exercise executing functions in new cases”, (Omnibus Law that amended the Law on Jurisdiction).

#### **Decisions of the Panel - *ratione materiae***

The Panel firstly noted that the HoM did not raise such an exception in relation to conduct that could amount to murder and/or ethnically motivated crimes so that this aspect of the case would not be affected.

Secondly, the Panel determined that even if the underlying conduct was considered in whole or in part to amount to kidnapping or hostage taking, the responsibility of EULEX to investigate would only have been extinguished some time in 2010. Its failure to investigate the case up to that point in time would still raise issues under Articles 3 and 8 and possibly also under Article 13 of the Convention.

With regard to the comments of the HoM on the Omnibus Law above, the Panel noted, that regardless, Article 7(A) provided for the “Authority of EULEX prosecutors in extraordinary circumstances ... In extraordinary circumstances a case will be assigned to a EULEX prosecutor by a joint decision of the Chief State Prosecutor and EULEX Kosovo competent authority.”

### **Decision and findings of the Panel**

Based on the above reasons, the Panel was satisfied that all relevant jurisdictional requirements with regard to admissibility were met and declared the case to be admissible.

### **Case no. [2014-36 Z.A. Against EULEX](#)**

### **Jurisdiction of the Panel, Rule 25 (1) and Article 29 (d) of its Rules of Procedure - Competence of the Panel to review proceedings before the Courts of Kosovo**

#### **The facts**

The facts of this case were that on 17 September 2010, the Complainant submitted a request for recognition of his status as the Kosovo Liberation Army (KLA) veteran with the Pejë/Peć branch of the Organisation. The Complainant invoked a number of provisions of the Constitution of Kosovo, the Declaration on Human Rights, the European Convention of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. In substance, he demanded that he be granted KLA veteran status.

#### **Assessment by the Panel**

The Panel noted that the Complainant’s grievances concerned a dispute between himself and the Organisation of KLA Veterans with regard to his veteran status. The Complainant had tried unsuccessfully to bring his case before the Kosovo courts. According to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot in principle review judicial proceedings before the courts of Kosovo. It has no jurisdiction in respect of either administrative or judicial aspects of the work of the said courts. Consequently, the Panel determined that it could not influence the outcome of judicial proceedings or the speed with which complaints were examined by the Kosovo courts. Even where EULEX judges take part in the proceedings, it does not detract from the fact that such a court forms part of the Kosovo judicial system.

#### **Decision and findings**

It followed that the complaint fell outside the jurisdiction of the Panel as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo. The Panel, therefore unanimously, held that it lacked the competence to examine the complaint, as it fell outside its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure, and declared the complaint to be inadmissible.

**Case no. 2015-10 [Shaban Sylja against EULEX](#)**

**Jurisdiction of the Panel, Rule 25 (1) and Article 29 (d) of its Rules of Procedure - Competence of the Panel to review proceedings before the Courts of Kosovo**

**The facts**

On 17 December 2012, the Complainant was convicted of Attempted Aggravated Murder by the Basic Court of Pristina. He was sentenced to a term of imprisonment of eight years.

**Submissions by the Complainant**

The Complainant submitted that he was under house arrest from 6 May 2011 until 23 March 2015 and that his fundamental rights as guaranteed by the Constitution of the Republic of Kosovo were violated. His complaint appeared to pertain to the question of the deduction from his sentence of the period of time which he spent under house arrest. While the precise nature of the complaint is somewhat ambiguous, the Panel understood the complaint to be directed against decision/decisions of the Kosovo courts in respect of his detention.

**Assessment of the Panel**

The Panel has held on numerous occasions that, according to Rule 25, paragraph 1, of its Rules of Procedure, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo.

It followed from that fact alone that the complaint falls outside the mandate of the Panel as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo. The Panel was not satisfied that the Complainant had demonstrated that the conduct complained of could be otherwise attributed to EULEX.

Furthermore, the Panel noted that the conduct complained of would seem to fall outside of the 6-month timeframe within which a complaint must be filed with the Panel, Rule 25(3), Rules of Procedure.

**Decision and findings**

The Panel unanimously declared the complaint to be inadmissible because it lacked the competence to examine the complaint, as it fell outside its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure and it did not comply with Article 25(3) of the Rules with regard to the time limit for the filing of a complaint.

**Case no. 2015-01, [Milos Jokic Against EULEX](#)**

**Jurisdiction of the Panel, Rule 29 (d) of its Rules of Procedure - Competence of the Panel to review proceedings before the Courts of Kosovo**

**The facts**

The facts of the complaint were that the Complainant was arrested on 26 August 1999 on suspicion of having committed acts of genocide. He was convicted of war crimes and sentenced to twenty (20) years in prison on 20 June 2000. Following a retrial he was acquitted of all charges and

released from detention on 3 May 2002. The Complainant lodged a claim for compensation for unjustified detention with the Basic Court of Pristina against the Government of Kosovo in April 2009. The Complainant alleged that his right to a fair trial within a reasonable time as guaranteed by Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms (the Convention) and by Article 10 of the Universal Declaration of Human Rights (the Declaration) had been violated. He also maintained that there was no effective legal remedy to prevent further violations of his rights, in breach of Article 13 of the Convention and Article 8 of the Declaration. He further alleged a violation of Article 5(5) of the Convention (the right to compensation for unlawful detention).

### **Submission by the Complainant**

The Panel deduced that the tenor of the complaint appeared to relate exclusively to acts or alleged failures of the Kosovo judiciary in the Kosovo courts.

### **Decision and findings**

The Panel therefore decided unanimously that it lacked the competence to examine the complaint, as it fell outside its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure and that it also failed to comply with Article 25(3) of the Rules regarding time limit.

### **Case No. 2015-09 [Driton Hajdari Against EULEX](#)**

### **Jurisdiction of the Panel, Rule 29 (d) of its Rules of Procedure - Competence of the Panel to review proceedings before the Courts of Kosovo**

#### **The Facts**

The facts of this case were that on 17 December 2012, the District Court, Pristina convicted the Complainant and four other co-perpetrators of aggravated attempted murder. The Complainant was sentenced to seven years in prison.

#### **Submissions by the Complainant**

The Complainant submitted that he was wrongly convicted and he protested his innocence. He also complained that his detention on remand was unlawful. The Panel noted that the Complainant's grievance was in relation to court proceedings and his alleged unfair conviction in the Kosovo courts.

#### **Decision of the Panel**

The Panel examined the complaint on the basis of its jurisdiction of the Panel, Rule 29 (d) of its Rules of Procedure: the competence of the Panel to review proceedings before the Courts of Kosovo.

The Panel unanimously held that it lacked the competence to examine the complaint, as it fell outside its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure and because it was unsubstantiated, declared the complaint inadmissible.

**Case no. 2015-03 [Dekart Shkololli Against EULEX](#)**

**Article 29 (e), Rules of Procedure - Complaint manifestly ill-founded**

**The facts**

The facts as alleged were that the Complainant was convicted and sentenced to imprisonment in Germany although he provided no details about the nature of his conviction or punishment. The Complainant had a son, born in 1997, who apparently lived in Germany. He has been separated from his son since 2004.

**Submission by the Complainant**

The Complainant submitted that he was unfairly convicted and imprisoned. He also appeared to complain that he has been separated from his son and asked to be reunited with him. He requested compensation for the injustice which he alleged had been done to him.

**Decision of the Panel**

The Panel examined the case in the context of Article 29 (e), Rules of Procedure - Complaint manifestly ill-founded.

The Panel noted that the Complainant's grievance appeared to relate to criminal proceedings before the courts in Germany as well as his detention. It also seemed to relate to the custody over his son. It was not argued, let alone shown, that EULEX was involved in any capacity in these matters.

It followed that the present complaint fell outside the ambit of the executive mandate of EULEX Kosovo and, consequently, outside of the competence of the Panel, as formulated in Rule 25 of its Rules of Procedure and in the OPLAN of EULEX Kosovo.

The Panel decided unanimously, that the complaint was manifestly ill-founded within the meaning of Article 29 (e) of its Rules of Procedure, and declared the complaint to be inadmissible

**Case no. 2015-13 [W.D. Against EULEX](#)**

**Article 29 (e) Rules of Procedure - Complaint manifestly ill-founded**

**The facts**

The facts of the case as presented by the Complainant were that in late August 2012, he had made a report to EULEX against S.H. who was described as "the Chief of the group of the Assembly of LDK". It was alleged that S.H. asked the Complainant for a bribe, which consisted of a car or Euros 30,000.00, in order to change usage of the Complainant's land from agricultural land to development land. The Complainant refused to pay and as a result, he alleged that was assaulted.

The Complainant reported the matter to EULEX police and alleged that he was offered protection from EULEX. He said that investigators then "wired him up" and he continued to deal with the suspect whilst he pretended to go along with the alleged scheme of S.H. and his associates, A.A. and M.R. The Complainant said he obtained a car and met with S.H., A.A. and M.R. on 5 September 2012. The resulting tape recording of the conversation was then sent to EULEX Translation Pool at

around 14:30 on the same date. At 15:30, within an hour of the incriminating tapes going to the Translation Pool of EULEX, S.H. is said to have phoned A.A. in an agitated manner saying he did not want to buy the car. The Complainant inferred from this that the recording was leaked by the EULEX Translation Department. It was submitted that S.H., A.A. and M.R. were under investigation for corruption, but that charges were filed only against A.A. and M.R.

### **Submission by the Complainant**

The Complainant alleged violations of the following provisions of the European Convention on Human Rights and Fundamental Freedoms (The Convention): Articles 3, 6 and 8 of the Convention. In particular, the Complainant asserted that the content of the wired conversation had been leaked by EULEX's Translation Department thereby putting his security at risk. The Complainant also alleged that the translation made of the taped conversation did not accurately reflect the agitation of S.H. As a result, he said that the Dutch Prosecutor dismissed the case against S.H. based on an inadequate translation. The case was then transferred to an Italian Prosecutor who refused to further consider S. H.'s case on the basis that an Indictment had already been filed. The Complainant also alleged that Italian Prosecutor was rude, unpleasant and would not hear any representation from him that the leaked recording had to be investigated.

### **Decision of the Panel**

Having considered the actions/omissions complained of, the Panel came to the view that the complaint did fall in principle within its jurisdiction. The Panel noted that the Complainant, firstly, alleged that the content of the wired conversation was leaked by EULEX'S Translation Department. Having considered the evidence provided by the Complainant, the Panel concluded that there was not credible evidence to show that there was a leak of the recorded conversation and that any leak originated from EULEX. Having reviewed the material and information provided by the Complainant, the Panel was not satisfied that he had substantiated the suggestion that **ray** of the actions and/or omissions attributed by him to EULEX amounted to, or involved a violation of his fundamental rights. Therefore, the Panel considered these allegations to be manifestly ill-founded.

With regard to the other aspects of the complaint, the Panel was not satisfied that the allegations were adequately substantiated by the Complainant or, where they were, that they would amount to a violation of his fundamental rights. These aspects of the complaint were, therefore, also manifestly ill-founded.

The Panel therefore found that the complaint was manifestly ill-founded within the meaning of Rule 29. 1. (e) of its Rules of Procedure, and declared the complaint to be inadmissible.

### **Case no. 2015-08 [Afrim Berisha Against EULEX](#)**

#### **Rule 25 (2) Article 29 (d) of its Rules of Procedure - temporal jurisdiction of the Panel**

##### **The facts**

The facts of the case as presented by the Complainant were that on 18 June 2000, at 10.00, the Complainant was driving his vehicle to his place of work, the Grand Hotel, Pristina. He was stopped near the hotel by the Kosovo Police but on identifying himself, he was allowed to drive to work and park his vehicle in the hotel car park. The Complainant stated that the reason the road was blocked was because there was a suspected bomb at the main entrance to the Grand Hotel. The

Complainant stated that KFOR searched vehicles, including his vehicle and that KFOR used a robot to search his vehicle. The Complainant states that KFOR placed dynamite at the rear of his vehicle and carried out a controlled explosion which resulted in damage to the rear of his vehicle.

The Complainant went to various representatives of KFOR and UNMIK and he submitted a compact disk to a KFOR representative which had a recording of the entire event surrounding the damage to his vehicle. The Complainant stated that KFOR informed him that they would pay for the damage and would contact him by phone but this did not occur. The Complainant stated that he also tried on three occasions, once in 2014 and twice in 2015, to contact EULEX in order to request EULEX to deal with his case but on each occasion EULEX security at the Missions HQ denied him any contact with EULEX staff.

### **Submissions by the Complainant**

The Complainant submitted that his right of access to justice was denied to him and that his economic rights were violated by KFOR and UNMIK police. He also submitted that he was denied any contact with EULEX staff on three occasions by the EULEX security staff at EULEX HQ.

### **Decision of the Panel**

The Panel therefore noted that the complaint originated from an incident that took place in Pristina in June 2000, under UNMIK administration and concerned the actions and/or inactions of KFOR and UNMIK Police. Taking into consideration Rule 25 of its Rules of Procedure, which limited the Panel's mandate to complaints related to human rights violations committed by EULEX Kosovo, the Panel observed that it lacked the jurisdiction to examine actions or omissions by KFOR and/or UNMIK.

Furthermore, in accordance with Rule 25, paragraph 2 of its Rules of Procedure, the Panel only examines complaints which concern alleged human rights violations that occurred after 9 December 2008, the date on which EULEX became operational.

### **Decision and findings**

The Panel decided that it lacked competence to examine the complaint, as it fell outside its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure, and declared the complaint to be inadmissible.

### **Case no. 2015-07 [Dobrivoje Radovanovic Against EULEX](#)**

#### **Article 29 (d) of its Rules of Procedure - jurisdiction of the Panel**

##### **The facts**

The facts of this case as presented by the Complainant were that the Complainant bought a cow and a calf from G.R on an unspecified date in March 2015. On his way home, he was stopped by the Kosovo Police, who seized the animals on suspicion that they had been smuggled into Kosovo as they did not have the required ear tags. On 5 March 2015, the Regional Office of the Kosovo Customs in Pejë/Peć issued a decision and confiscated the cow and the calf as the Complainant did not have proper documentation for their purchase. The Complainant was also ordered to pay a customs fee and a fine in the amount of approximately Euros 1,100.00. On 19 May 2015, the Kosovo Customs in Pristina upheld that decision.



### **Submission by the Complainant**

Without invoking any particular provisions of the international documents for the protection of human rights, the Complainant submits that he was unfairly punished, in his absence and without being heard.

### **Decision of the Panel**

The Panel observed that it was not argued, let alone shown, that EULEX was in any way involved in the alleged violations of the Complainant's rights. The decisions that he complained about were given by the Kosovo customs authorities. It followed that the issues raised by the Complainant did fall within the ambit of the executive mandate of EULEX Kosovo as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

### **Decision and findings**

The Panel therefore unanimously decided that it lacked the competence to examine the complaint, as it was not within its jurisdiction with regard to the meaning of Article 29 (d) of its Rules of Procedure, and declared that the complaint was not admissible.

**Case no. 2016-03, [Afrim Islami Against EULEX Kosovo](#).**

### **Rule 29 (d) outside the jurisdiction of the Panel**

#### **The facts**

The facts of this case as presented by the Complainant are that the Complainant went to his office "Abis Driving School" at St. Agim Ramadani, no. 22/44, on 27 August 2015 where he was confronted by security officers from the Public Housing Enterprise (PHE) and prevented from entering his office by some security officers from the PHE. The Complainant then went to the Office of the PHE in order to ascertain why he was prevented from entering his office. The Director of the PHE, N.K., informed him that he had to pay a debt of Euros 37,000-00, the equivalent of three (3) years rent in advance. The Complainant duly paid the outstanding debt.

When the Complainant went to his office on 2 September 2015 he was again confronted by security officers from the PHE. This incident resulted in communications with the Director of the PHE, the Kosovo Public Prosecutor, S.I. and the Kosovo Police with all of whom he tried to resolve the issue as well a series of legal proceedings in the Kosovo courts.

### **Submission by the Complainant**

Without invoking any particular provisions of the international instruments for the protection of human rights, it can be assumed from the content of the complaint that the Complainant alleged that he was unjustly detained by the police, (Article 5, Convention); his right to privacy was violated (Article 8, Convention); denied his right to an effective remedy (Article 13, Convention) and that his right to the peaceful enjoyment of his possessions was interfered with, (Article 1, First Protocol, Convention).

## **Decision of the Panel**

Before considering whether to review the complaint in accordance with Rule 25, paragraph 1, of the ROP, the Panel must decide whether to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its ROP.

The Panel observed that it was not argued, let alone shown, that EULEX was in any way involved in the alleged violations of the Complainant's rights. While the Panel acknowledged that some issues raised, in particular the detention of the Complainant; the failure of the authorities to act decisively and effectively to prevent further harassment; the failure to investigate the extraction of a large amount of money, are all of a rather serious nature and raise grave concerns, they do not fall within the ambit of the executive mandate of EULEX Kosovo.

## **Decision and findings**

The Panel, accordingly unanimously, decided that it lacked competence to examine the complaint, as it fell outside its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure, and declared the complaint to be inadmissible.

**Case no. 2014-39 [Musli Hyseni Against EULEX Kosovo](#).**

## **Rule 29 bis - striking out a Complaint**

### **The facts**

The facts of the case as submitted by the Complainant may be summarised as follows: The Complainant was arrested on 5 November 2013 at his house in the village of Bresalc, Gnjilane/Gjilan on the suspicion of having committed a number of criminal offences.

By a decision dated 7 November 2013, the Pre-Trial Judge of the Basic Court, Pristina ordered his detention on remand for one (1) month. Through a number of subsequent similar Orders, the Complainant was detained on remand until 15 October 2014. The Complainant lodged his complaint with the Panel from the Detention Centre, Prizren, on 13 October 2014.

### **Submission by the Complainant**

The Complainant alleged that his rights under Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to liberty and security, were violated.

## **Decision of the Panel**

The Panel noted that the Complainant's grievance concerns, in essence, a number of decisions by the Pre-Trial Judge to order his continued detention on remand for a period of time from 7 November 2013, to 15 October 2014.

On 7 March 2016, the Panel communicated with the Complainant seeking an update from him in respect of the facts of the case. The Panel did not receive any further response from the Complainant to its request of 7 March 2016. The Complainant eventually contacted the Secretariat of the Panel on 11 April 2016 and stated that he no longer wished to pursue his complaint and that he had been released from detention.

Rule 29 of the Rules of Procedure provides that the Panel may, at any stage of the proceedings, decide to strike a complaint out of its list of cases where the circumstances lead to the conclusion that the Complainant does not intend to pursue his or her complaint.

The Panel therefore decided to strike out the case from the list of cases in accordance with Rule 29 bis of its Rules of Procedure since the Complainant apparently did not wish to further pursue his case.

#### **4.5. Decisions on the implementation of the recommendations of the Panel**

##### **Case no. 2012-22 [Desanka and Zoran Stanišić Against EULEX](#)**

(This decision constitutes a follow-up to the Panel's previous decision of 11 November 2015 and the recommendations contained therein).

##### **Background**

On 11 November 2015, the Panel rendered its decision in relation to the complaint filed by the Complainants against EULEX and made a number of recommendations to the Head of EULEX Kosovo (HoM) in accordance with Rule 34 of the Rules of Procedure.

The decision reads in its relevant parts as follows:

The Panel found that there had been a violation of Article 13 of the Convention; held that it was not necessary to examine the case under Article 14 of the Convention and made the following recommendations to the HoM:

That the HoM make a declaration acknowledging that the circumstances of the case amounted to a breach of the Complainants' rights attributable to the acts [and/or omissions] attributable to EULEX in the performance of its executive mandate;

That the HoM provide a copy of the present Decision to the EULEX Prosecutors as this would inform the EULEX Prosecutors of the general nature of their obligation to involve victims in their investigations and to provide to them adequate reasons for termination of an investigation in a particular case".

##### **Submissions by the HoM**

On 15 December 2015, the HoM informed the Panel about the measures which he had taken in response to the recommendations of the Panel. He formally expressed his regret for the fact that the Complainants were not sufficiently involved in the investigative proceedings and that they were not given reasons for the termination of the investigations.

With regard to the second recommendation of the Panel, the HoM indicated that the Panel's decision of 15 November 2015 had been disseminated to EULEX prosecutors by the Acting Chief EULEX Prosecutor. In particular, EULEX Prosecutors were reminded that decisions on the dismissal of criminal reports should include "a brief summary of the reasons for the decision". Moreover, the need and feasibility of interviewing the person who has submitted the report should be assessed in each case before the decision on dismissal is issued.

### **Follow up decision by the Panel**

The Panel took note of the steps taken by the HoM to implement its recommendations. The Panel noted that its first recommendation was for the HoM to make a declaration to acknowledge that the circumstances of the case amounted to a breach of the Complainants' rights attributable to the EULEX Kosovo in the performance of its executive mandate. In his letter of 15 December 2015, the Head of EULEX Kosovo expressed his regret that the Complainants had not been sufficiently involved in the investigation process and that they had not been given adequate reasons for terminating that process.

The Panel found that whilst such a response does not fully embrace the Panel's recommendation, the regrets expressed by the Head of EULEX Kosovo constitute an implicit acknowledgment of the inadequacies of the investigative process, which goes some way towards providing relief to the Complainants for the violation of their rights.

The Panel, in its decision of 15 November 2015, also recommended that the HoM should provide copies of that decision to the EULEX Prosecutors through the appropriate channels. In his letter, the HoM indicated that the decision of the Panel had indeed been disseminated among the EULEX Prosecutors by the Acting Chief EULEX Prosecutor. The HoM further indicated that EULEX Prosecutors had been reminded of their obligation to provide a brief summary of their reasons in the dismissal of a criminal report and that the feasibility of interviewing the person who filed the report should be evaluated in every case. The Panel is satisfied that these steps are consistent with, and fully satisfy the recommendation issued by the Panel.

Having examined the information provided by the HoM, the Panel unanimously decided that the HoM had implemented the recommendations of the Panel and further decided to close the examination of this case.

### **Case no. 2014-32, [L.O. Against EULEX](#).**

#### **Background**

On 11 November 2015, the Panel rendered its decision in relation to the complaint filed by L.O. against EULEX Kosovo and it made a number of recommendations to the HoM in accordance with Rule 34 of the Rules of Procedure. The former HoM stated as follows in his response to the recommendations of the Panel by letter on 29 April, 2016:

"Since the Panel's recommendations concern measures that are at the disposal of the CPCC [Civilian Planning and Conduct Capability], several EU institutions as well as Member States, I have informed the CPCC and the Contributing States of the Panel's decision and findings, through the Civilian Operations Commander, and I consider the recommendation thus implemented."

### **Follow up decision by the Panel**

In its evaluation of the response by the former HoM, the Panel observed that, firstly, contrary to what the above statement of the former HoM seemed to suggest, responsibility for the implementation of the recommendations of the Panel falls entirely and exclusively to the HoM, not the CPCC and neither to Member States.

Secondly, whilst the former HoM stated in his letter that he informed the CPCC and the Contributing States of the decision and recommendations of the Panel, he did not allude to his efforts, if any, to implement the recommendations of the Panel.

Finally, and contrary to the apparent assumption of the former HoM, the responsibility to decide whether or not the recommendations of the Panel have been implemented rests entirely with the Panel. The Panel noted in this regard that whilst its recommendations are not legally binding, it is essential for the legitimacy and credibility of EULEX Kosovo, as a rule of law mission, that it should decisively and credibly demonstrate its commitment to the effective enforcement of human rights by ensuring that its actions are at all times consistent with international human rights standards in such circumstances.

The Panel thus declared unanimously that the former HoM did not implement its recommendations and invited the new HoM to fully consider and implement each one of the recommendations and to duly inform the Panel of the actions taken in due course. Finally, the Panel decided that it remains seized of this matter.

## **5. Activities of the Panel**

### **5.1. Meetings of the Panel**

#### **European External Service (EEAS) and the Committee for Civilian Aspects of Crisis Management, (CivCom), Brussels.**

The Panel, represented by the Presiding Member, Ms Magda Mierzewska and the Senior Legal Officer, John J Ryan, participated in a number of meetings with Ms Jana Kaliminova, Chairperson of CivCom; Mr Bert Versmessen, Deputy Civilian Operations Commander and Chief of Staff, Civilian Planning and Conduct and Capability, (CPCC), EEAS, Mr Alexis Hupin, Desk Officer, Kosovo, European Union External Action Service, (EEAS); as well as the representatives of the Member States of the CivCom Working Group, in Brussels on 28 September, 2016.

The meeting agenda items included discussions about, inter alia, the implementation of the recommendations of the Panel by the Head of Mission; compensation and restitution for victims; compliance with international human rights standards, Rules of Procedure of the Panel and follow-up procedure; induction training, lessons learned and the legacy of the Panel. The presiding member of the Panel also delivered a brief on the Panel to the CivCom member state representatives and engaged in a question and answer session with them.

#### **Meeting with the Head of Mission EULEX Kosovo**

The Panel met with Ms Alexandra Papadopoulou, the new Head of Mission, accompanied by Ms Elaine A Paplos, Ms Marianne Fennema and Ms Heidi Lempio in the HRRP Building 17 October 2016.

#### **European Union Special Representative in Kosovo**

The Panel also met with Ms Nataliya Apostolova, European Union Special Representative (EUSR) who was accompanied by Shaban Murturi, EUSR HQ, Kosovo Street No. 1, Pristina on 17 October 2016.

The following issues arose in discussions: the compliance of EULEX Kosovo with the recommendations of the Panel, the case load of the Panel and the nature of the complaints which came before the Panel, the necessity for human rights accountability mechanisms in Common Security and Defence Policy executive authority missions as well as the legacies of both EULEX Kosovo and the Panel. In conclusion, the EUSR said that she would welcome future such meetings with the Panel.

## **5.2. Public Outreach Campaign 2016**

The Panel continued with the implementation of its public 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".

The main thrust of the outreach campaign during the year was focussed on NGO's and civil society representatives. As part of this strategy, the Panel and Secretariat increased its activities in North Mitrovica in an effort to broaden its visibility in that area.

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 EULEX mission area. This is more pronounced in rural areas.

In this context, the Panel and the Secretariat will focus more outreach activities in those rural areas. The continuation of the TV and radio advertisement campaigns which were previously conducted by the Panel will assist the Panel in its efforts to reach out to the wider urban and rural population.

## **5.3. Induction training**

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 EULEX Kosovo and to raise the profile of the Panel with EULEX staff members in the EULEX Kosovo area of operations.

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

## **5.4. HRRP online**

The Secretariat maintains the Panel website at: [www.hrrp.eu](http://www.hrrp.eu). The site contains information on the mandate, procedures and operations of the Panel, as well as regularly updated information on the decisions of the Panel as well as the list of pending and finalised cases.

The table of the jurisprudence of the Panel is readily accessible as is its growing case law by subject matter both on admissibility and substance. This was created, inter alia, to provide ready and user-friendly access to the case law of the Panel for complainants, lawyers and the public at large: (<http://www.hrrp/jurisprudence.php>).

The website also provides information on:

Applicable human rights standards: (<http://www.hrrp.eu/relevant-rights.php>);

Application forms and instructions for filing complaints: (<http://hrrp.eu/filing%20complaints.php>);

The Panel also has a profile on Facebook: Human Rights Review Panel;

The above information is available in the English, Albanian and Serbian languages.

## 6. The Panel and the Secretariat

### 6.1. Members of the Panel

The Panel consists of four members; two external members which includes the Presiding Member as well as the substantive EULEX member of the Panel and the substitute EULEX member of the Panel, both of whom 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 Court of Human Rights, Strasbourg, France since 1998. She has extensive international training experience in various substantive and procedural human rights issues.

Ms. Mierzewska was appointed as a member of the EULEX Human Rights Review Panel by the EULEX Acting Head of Mission on 4 May, 2010. She was elected as the Presiding Member of the Panel on 3 October, 2012.

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

Dr Guénaël Mettraux, a Swiss citizen, 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 Guenael Mettraux was appointed as an International Judge with the Specialist Chambers and Specialist Prosecutors Office, The Hague, Netherlands, on 7 February, 2017.

### **Ms Elka Ermenkova**

Ms Elka Ermenkova, a Bulgarian citizen, studied law at the University of Blagoevgrad, Bulgaria where she graduated in 1997. 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 became 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 Ms Ermenkova became a District Court Judge, second and first 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. As an appeals judge she adjudicated on appeals against judgements of five regional courts in both criminal and civil cases. 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 this capacity she assisted the Council Secretariat (later the European External Action Service (EEAS)), in the planning and conduct of civilian crisis management missions, through the provision of expertise in Rule of Law.

In January 2012, she was employed by EULEX Kosovo as an International Judge at the Appeals Panel for the appeals against decision of the Kosovo Property Claims Commission, where she decided upon property disputes related to the armed conflict in Kosovo from 1998/1999. In August 2014



she was appointed as International Criminal Judge to the Supreme Court of Kosovo with mandate over criminal cases related to war crimes, organised crime and other serious crimes.

Ms Ermenkova was appointed to the Human Rights Review Panel in January 2013 as a Substitute member and in November 2016 she was appointed as the substantive EULEX Member of the Panel. She has amassed extensive experience in Human Rights Law, especially the right to a fair trial, right of liberty, freedom of speech, prohibition of discrimination and right to property throughout her professional career.

### **Substitute Member**

#### **Ms Anna Bednarek**

Anna Bednarek graduated from the University of Gdansk, Poland with a Magister of Law (LLM) in 1994 and she passed the Polish State Examination for Judicial Posts in 1997. She completed Postgraduate studies as a civil judge at the Polish Academy of Science, Warsaw as well as her post graduate studies at the Institute of Science of Developing Countries at the University of Warsaw in 2008/2009. Ms. Bednarek was employed as a Senior Expert in the Office of the Agent of the Polish Government at the European ComEULEX Kosovo and Court of Human Rights, Human Rights and National Minorities Division, Legal and Treaty Department of the Polish Ministry for Foreign Affairs, Warsaw. She was also a member of the Delegation of the Polish Government at the 54th Session of the United Nations ComEULEX Kosovo on Human Rights.

She was appointed as a Judge in the District Court of Warsaw between June, 1998 and 2001. She was employed as Consul in the Polish Embassy, Rome, Italy from 2001 until 2007. She worked as a Judge at the District Court of Warsaw from April, 2007 until January, 2009. She was then appointed as a EULEX Judge at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters where she served since January 2009.

Ms Bednarek was appointed as a Substitute Member of the EULEX Human Rights Review Panel (Panel) by the Head of Mission EULEX Kosovo on 25 May, 2011 and she was appointed as a substantive Member of the Panel by the EULEX Head of EULEX Kosovo on 12 July, 2011. Thereafter Ms. Bednarek worked as a Judge at the District Court of Warsaw from January, 2012 until September 2015. She participated as the co-author and consultant in a Project run by the Helsinki Foundation in Poland which was aimed at the publication of the Manual for Judges and Prosecutors "Equal Treatment of the Parties to the Proceedings" in 2015. The Manual was published in February 2016. Between September 2014 and June 2015, Ms. Bednarek co-operated with the Central and Eastern European Law Initiative Institute in Prague, Czech Republic, in the Project aimed at the publication of the "Judicial Manual on Independence, Impartiality and Integrity of Justice: A Thematic Compilation of International Standards, Policies and Best Practices". The Manual was published in June 2015.

In April 2015, she was invited by the CEELI Institute, Prague to participate in the Project "Judging in Democratic Society", where she was involved as a trainer of Courts' Presidents in Tunisia on international human rights standards. In October 2013, Ms. Bednarek took part as a facilitator in the Project run by the Foundation for Polish-Ukrainian Cooperation (PAUCI) from Warsaw and delivered seminars at the Ukrainian Universities (Lvov, Kharkov, Donetsk) on the theme: "Strengthening the control function of the judiciary as a balance between the authorities in Ukraine".

In 2008 she participated as a trainer with the “Human Trafficking-Training for Judges” Project designed to combat trafficking in human beings and slavery. This Project was organized by the La Strada Foundation, Warsaw, Poland in cooperation with the Polish Ministry of the Interior and the British Embassy in Warsaw. Ms. Bednarek also worked for Amnesty International as Project Manager of a project in Poland for the publication of a Handbook on Human Rights Education.

Ms Bednarek was appointed as the Substitute Member of the Human Rights Review Panel by the Head of Mission EULEX Kosovo on 14 October, 2016.

## **6.2. The Secretariat**

The Secretariat of the Panel consists of a Senior Legal Officer, one Legal Officer and two Interpreters/Translators.

### **Mr John J. Ryan**

John J Ryan, an Irish citizen and former army officer, graduated with a Bachelor of Laws, (Hons), Law and European Studies, 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 as a consultant 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 articles on the UNMIK Human Rights Advisory Panel and the EU Human Rights Review Panel, EULEX Kosovo were published in the Irish Defence Forces Annual Reviews, 2010 and 2015 respectively.

### **Ms Noora Aarnio**

Ms Noora Aarnio, a Finnish citizen, graduated with a Master of Laws from the University of Helsinki, Finland, in 2004. She completed a one year in-bench-training course in a District Court of Lohja Finland, in 2005, in order to qualify to work as a judge. From January 2006 until February 2010 she was employed as an Assistant Judge, firstly in the Insurance Court and thereafter in the Court of Appeals, Helsinki. Subsequently, she worked as a Legal Officer in EULEX, initially for one year in the District Court, Mitrovica followed by two years in the Supreme Court of Kosovo. She returned to Finland to work as a Judge in the District Court, Pirkanmaa where she was employed from August 2013 to October 2014. Thereafter, she worked as a Legal Advisor, in the International Unit of the Department of Judicial Administration, Ministry of Justice, Finland from October 2014 to December 2015. She returned to EULEX in April 2016 where she worked as a Legal Officer in the Court of Appeals/Supreme Court of Kosovo until November 2016 at which time she was appointed as the Legal Officer with the Secretariat of the Human Rights Review Panel.

### **Ms Katica Kovacevic**

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**

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.

### **6.3. Former staff – Panel and Secretariat**

The following staff members completed their assignments with the Panel and the Secretariat in 2016.

#### **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, Dusseldorf 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 EULEX Kosovo EULEX appointed Dr Dominik as a member of the European Union Human Rights Review Panel in January 2013.

#### **Mr Paul Landers**

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 EULEX Kosovo 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 Joanna Marszalik**

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 was recruited by the Organisation for Security and Cooperation in Europe, Kosovo in December 2010 where she was employed as the Senior Human Rights Officer, supervising the Regional Centre, Pristina. She was appointed as a Legal Officer in the Panel Secretariat in April 2012.

### **Ms Shpresa Gosalci**

Ms Shpresa Gosalci, Kosovo Albanian, holds a Master’s Degree in Business Marketing and Management from the AAB University, Pristina. She was employed as an Interpreter (Albanian/Serbian/English) with KFOR from July 1999 to June 2000 and as an Administrative/Language Assistant in the UNMIK Police Commissioner’s Press and Public Information Office from June 2000 until March 2009. She commenced her assignment as an Administrative /Language Assistant with the Panel Secretariat in July, 2010.

## **7. Operational and Administrative Matters**

### **7.1. Budget**

In 2016, 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 implementation of the public outreach campaign, in particular, the TV and/or radio broadcasts, without recourse to the discretionary budgetary resources of EULEX Kosovo.

Nonetheless, additional budgetary resources would assist the Panel in its day to day operations. This would also enhance the actual and perceived independence of the Panel and thereby further add to the credibility of EULEX Kosovo in relation to its commitment to protect and promote human rights in Kosovo.

### **7.2. Human resources**

The Secretariat of the Panel was adversely affected by staffing issues in 2016. The Panel lost one legal officer post in the reconfiguration of the EULEX staff as well as one administrative assistant/language assistant post. The Panel had to operate with just one legal officer for the final three months of the year and the duties of the administrative assistant have had to be assumed by two Interpreter/Translators in addition to their regular duties.

In addition, Ms Katja Dominik, EULEX Kosovo Panel Member and Criminal Judge, Basic Court, Mitrovica, resigned as the EULEX Kosovo Member of the Panel on 14 June 2016 in order to

concentrate on her increased judicial responsibilities in her new post as the Head of the Executive Division.

Ms Elka Ermenkova, Criminal Judge of the Supreme Court/Appellate Court, Pristina and EULEX Kosovo Substitute Member of the Panel was appointed as the substantive EULEX Kosovo Member of the Panel to replace Ms Dominik on 14 October, 2016.

Ms Anna Bednarek, Appeals Judge, Kosovo Property Agency Appeals Panel, Pristina was appointed as the EULEX Kosovo Substitute Member of the Panel on 14 October, 2016.

Ms Magda Mierzewska, the Presiding Member of the Panel avails of this opportunity to thank Ms Dominik for her outstanding professional contribution to the work of the Panel during her four (4) plus years of dedicated service and to wish her every success in her current assignment and in future career.

She also wishes to take this opportunity to congratulate Ms Ermenkova and Ms Bednarek on their respective appointment to their respective memberships of the Panel and to wish them every success in their endeavours with their assignments.

She further takes this opportunity to welcome the new Panel Legal Officer, Noora Aarnio, Legal Officer, Court of Appeals/Supreme Court to her new assignment with the Panel and to wish her every success in her new post.

## **8. The UNMIK Human Rights Advisory Panel – End of Mandate**

### **Establishment**

As stated in Para 4.2 above, the United Nations Interim Administration Mission in Kosovo (UNMIK), was established through UN Security Council Resolution 1244 on 10 June, 1999. The UNMIK Human Rights Advisory Panel (HRAP) was created by UNMIK under Regulation No. 2006/12 of 23 March, 2006 on the Establishment of the Human Rights Advisory Panel. The mandate of the HRAP was to examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of their human rights. The HRAP commenced its operations with its inaugural session from 12 to 16 November, 2007. It received some 527 complaints and it found that UNMIK committed human rights violations in 335 of those cases. The HRAP completed its mandate and issued its Final Report on 30 June, 2016.

### **Murdered and missing persons cases**

Many of these cases related to alleged human rights violations by UNMIK which included the alleged ineffective investigations of abductions, disappearances and killings and inhumane treatment of ethnic minorities and political opponents of the Kosovo Liberation Army in the murdered and missing person's cases, i.e. "enforced disappearance" cases.

The HRAP found that UNMIK had committed 233 human rights violations of Article 2, "the right to life" of the Convention, inter alia, through a failure to carry out adequate and effective investigations into the disappearance or abduction and/or the killing of the close relatives of the complainants.

The HRAP observed that only 5 of those cases concerned Kosovo Albanians and that the victims in 2 of those 5 cases had either worked for, or were otherwise associated with the Serbian police or

security forces. Members of the Kosovo Liberation Army were named as suspects in these cases. The HRAP recommended in these cases that UNMIK should publicly acknowledge responsibility for its failure to adequately investigate the disappearances and killings of the victims and to issue a public apology to the complainants and their families. Moreover, the HRAP recommended that UNMIK pay compensation for the non-pecuniary damage suffered by the complainants due to the failure of UNMIK to conduct adequate and effective investigations.

### **Property cases**

In general terms, in relation to property matters, reference must be made to the so called “14,000 property cases” for the record, many of which were examined by the HRAP. These cases related to those Kosovo Serbs who left their homes and fled to Serbia, primarily towards the end of the armed conflict in the latter part of 1999. A lot of this property was later usurped, misappropriated, damaged or destroyed. Approximately 17,000 compensation claims were duly lodged before the Kosovo courts in 2004. The vast majority of these cases were filed by ethnic Serbs, in order to comply with the statutory five year time limit for the submission of such civil compensation claims. The continuous illegal occupation of these properties, on which the Kosovo Property Agency ruled, was stated to be of major concern to the HRAP.

By way of background information on this issue, the then Director, Department of Justice (D/DOJ), UNMIK, sent a letter to all municipal and district court presidents and to the President of the Supreme Court of Kosovo on 26 August, 2004. He stated that “over 14,000” such claims had been lodged with the courts and he referred to “the problems that such a huge influx of claims will pose for the courts”. The D/DOJ asked that “no [such] case be scheduled until such time as we have jointly determined how best to effect the processing of these cases”. On 15 November, 2005, the D/DOJ requested the courts to process the claims for damages which were caused by identified natural persons and for damages that were caused after October 2000, considering that the “obstacles to the efficient processing of these cases” no longer existed.

### **Handover of executive mandate**

The UNMIK executive mandate ended on 9 December, 2008 at which point EULEX Kosovo was charged with responsibility for the rule of law in Kosovo.

UNMIK and EULEX concurrently signed a memorandum of understanding on the modalities, and the respective rights and obligations which arose from the transfer from UNMIK to EULEX of the “enforced disappearance” cases and the related files on the ongoing investigations and prosecutions which had been undertaken heretofore by UNMIK International Prosecutors.

The UNMIK SRSG advised the HRAP at that time that the best solution for the “enforced disappearance” cases was for EULEX and other competent (Kosovo) authorities continue with the investigations and prosecutions.

The HRAP also recommended that UNMIK obtain assurances from the Kosovo authorities that the property cases filed by the complainants would be processed by the Kosovo courts. UNMIK consequently sent a pro forma letter to EULEX with a request that it monitor these cases in the Kosovo courts.

The HRAP also recommended that UNMIK award adequate compensation to complainants for the non-pecuniary damage sustained by the prolonged stay of the proceedings in the property cases which had been finalized.

## **Criticism of UNMIK**

The Presiding Member of the HRAP was seriously critical of UNMIK in the Final Report. He was especially critical of the fact that UNMIK had failed to implement the recommendations of the HRAP. Consequently, he concluded that, despite the vast resources invested in the compilation of information, the issuance of admissibility decisions as well as opinion and recommendations, very little had been achieved because of UNMIK non-compliance with recommendations.

Due to the reluctance of UNMIK to do so, the Presiding Member of HRAP stated that its work had “obtained no redress for the complainants.” “As such, they have been victimized twice by UNMIK, firstly, by the original human rights violations committed by UNMIK against them and secondly, by putting their hope and trust into this process”.

He was also critical of any possible suggestion of the handover of the jurisdiction over the “enforced disappearance” cases to the Kosovo authorities, not least, because almost all of these cases concerned Kosovo Serb victims. These Serb complainants were justifiably concerned about their security when they filed these complaints with UNMIK and thereafter with the HRAP and indeed, many of them had requested anonymity.

## **Legacy and record**

Notwithstanding the many challenges and obstacles that confronted the HRAP, it made major advances in terms of its legal legacy and record. Specifically, the Panel contributed to international thinking concerning numerous questions in the context of human rights protection standards, especially those related to the human rights accountability of international organizations in the executive authority role.

The experiences and the lessons that the HRAP acquired in its operations as a quasi-judicial human rights body where UNMIK, a UN mission, assumed the role of a “surrogate state” was another significant aspect of its legal legacy. This experience presented a strong incentive for further discussions about what might be the optimal type of human rights review body to operate within the distinctive context of an international mission which administered a defined territory. To that end, the Final Report offered suggestions as to the appropriate structure and mode of operations such a body might have, should there be a need for another such mission in the future.

The Presiding Member of the HRAP concluded his comments in the Final Report as follows; “The hope remains that at least some of these cases (enforced disappearances) will find their way to the docket of the special tribunal being created by the international community and Kosovo authorities - the Kosovo Relocated Specialist Judicial Institution (KSJI) - whose jurisdiction includes ‘serious crimes allegedly committed in 1999-2000 by members of the Kosovo Liberation Army (KLA) against ethnic minorities and political opponents”.

## **9. Conclusions and recommendations**

### **Acknowledgment of violations of human rights by EULEX**

On a number of occasions where violations of human rights were attributed to the Mission, the Panel recommended to the HoM that he/she should issue a public acknowledgement of that fact. The acknowledgment of responsibility is recognised in the human rights domain as a form of remedy to the violation. Up to this point, the HoM has consistently declined to do so.

The basis of this reluctance appears to be a concern associated with possible further litigation and liability. The Panel is not convinced by such an argument. Firstly, once the Panel itself has found such a violation, an organ of the Mission has, for all purposes, made that determination. There has been no indication of law suits being triggered as a result of the Panel's findings and decisions.

Secondly, such acknowledgment can readily be phrased in a way that does not import any recognition of civil liability beyond what the Mission might already incur as a result of its function. Thirdly, absent the possibility under the regime regulating the Panel to recommend financial compensations, the acknowledgment of responsibility would provide an important (albeit often insufficient) means of remedying the wrong. Based on the above, the Panel would invite the HoM, in consultation with relevant authorities, to consider further the implications of such acknowledgment with a view to enable the HoM to considering a change of practice in the future.

### **Murdered and Missing Persons Cases**

It is noted that UNMIK and EULEX signed a Memorandum of Understanding on 26 November 2008, on the modalities, and the respective rights and obligations which arose from the transfer from UNMIK to EULEX Kosovo of cases of murdered and missing persons i.e. "enforced disappearance" cases and the related files which involved ongoing investigations, prosecutions and other activities which had been undertaken into these cases up to that time by UNMIK International Prosecutors.

It is further noted that the UNMIK HRAP recommended in its Final Report on 30 June 2016 that EULEX Kosovo should continue with the investigations of these missing and murdered person's cases in order to comply with the requirements of the procedural limb of Article 2 of the Convention. It was imperative that the circumstances of the "enforced disappearance" of these ethnic minorities, including political opponents, be established and that the alleged perpetrators, the KLA and other armed Kosovo Albanian armed groups be brought to justice.

It is also noteworthy, that the Presiding Member of HRAP stated that the transfer of jurisdiction in these cases to the Kosovo authorities was not a viable solution, inter alia, since nearly all such cases concerned Kosovo Serb victims. These complainants were understandably concerned about their security at the time they filed these complaints with UNMIK and later on with the HRAP and had, in fact, requested anonymity in most cases.

In light of the recent decisions and findings of the Panel in relation to the "enforced disappearance" cases during the reporting period, it is recommended that EULEX Kosovo give due consideration to the procurement of the necessary human and material resources in order to conduct comprehensive investigations into the cases which were transferred from UNMIK to EULEX Kosovo in November 2008.

The Panel believes that an effective resolution of these cases, and the upholding of the rights of relatives of the victims, require a holistic approach that will involve all relevant stakeholders - the



HoM, EULEX Kosovo, the EUSR, Kosovo, the Kosovo authorities and all those active in Kosovo in regard to the resolution of those cases, in particular, in cases of “enforced disappearance”. The pooling of resources by the concerned stakeholders and the adoption of a coherent strategy between these different actors is essential, and in fact necessary, to the effective guaranteeing of the rights of relatives of the murdered and disappeared.

### **Prioritisation of cases**

A number of complaints placed before the Panel pertained to allegations of inadequate, incomplete or inexistent investigation of serious allegations of rights violations by the Mission. The Panel determined that a number of those complaints had merit and that violations had indeed occurred in this context.

As part of its evaluation of those cases, the Panel became acutely aware of a number of systemic problems pertaining to the treatment of these cases, including inadequate coordination within the Mission and inadequate recording of cases etc.

One of these systemic issues appears to pertain to the failure of EULEX Prosecutors to prioritise cases that clearly and evidently raise serious issues of human rights. This includes, in particular, the many un-investigated or inadequately investigated cases of enforced disappearances linked to the Kosovo conflict. It also pertains to a number of serious cases involving the fundamental rights of minorities, including the “*Roma* case”, which came before both the HRAP and the HRRP.

It seems therefore to be essential that, in the residual performance of its investigative and prosecutorial duties, the Mission should seek to give some degree of priority and urgency to the effective investigation of those cases that involve the serious and systematic violation of fundamental rights.

### **Continued reinforcement of the rule of law in Kosovo**

It is essential that the EU continues, in particular through EULEX Kosovo, to support efforts in Kosovo to reinforce the rule of law. Guaranteeing the independence, impartiality and effectiveness of the judiciary as well as ensuring the effective investigation of human rights violations which occurred in Kosovo should remain a priority for the Mission and for the EU itself. Particularly important in that context is the improved protection of rights of minorities with a view to prevent any sort of discrimination, in particular based on ethnic or religious grounds.

### **Reparation programme**

The payment of compensation to complainants and concerned family members is a constant theme in the public demesne in the event of the perpetration human rights violations by EULEX Kosovo. The fact that the Complaint is vindicated with a finding of a human rights violation is scant comfort in the context of the fundamental rights at issue in these cases.

It is therefore recommended that EULEX give serious consideration to the introduction of a full and comprehensive reparation programme, to include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims, complainants and other concerned family members and parties.

## **Property restitution**

With regard to property cases, it is noted that the HRAP recommended that UNMIK endeavour to obtain assurances from the Kosovo authorities that the cases filed by their complainants would be processed. UNMIK accepted this recommendation from the HRAP and sent a letter to EULEX Kosovo with a request that it monitor this process.

The HRAP had already found that there were violations of Article 6 (1) of the Convention in the majority of the property complaints that had been processed by the Kosovo courts and it urged the competent authorities to take all possible steps to ensure that these cases be heard without further delay.

In this regard, the European Commission stated in its Staff Working Document in the Kosovo 2016 Report, (9 November 2016) that: "The limited progress on the effective guarantee of property rights and the return and integration of displaced persons remains a concern".

As stated earlier in this report, the inability of the Panel to recommend compensation, reparation as well as property restitution to complainants is a constant source of criticism of the Panel. It may be noted that a regular property restitution programme is an indicator of the effectiveness of the rule of law in a democratic society and, in the event that the restitution of property is not possible, adequate compensation ought to be paid instead.

## **Jurisprudence**

The jurisprudence of the Panel has been the subject of increased interest amongst various entities which deal with the international protection of human rights. This is evidenced by academic research by students as well as other published materials. It may be concluded that the experience of the Panel is already considered to be an important element in the developing debate on the accountability of international organisations for alleged human rights violations in the executive role.

**ANNEX 1 Staff table**

<b>Panel</b>	
<b>Magda Mierzewska</b>	Presiding Panel Member
<b>Guénaël Mettraux</b>	Panel Member
<b>Elka Ermenkova</b>	Panel Member, EULEX Judge
<b>Anna Bednarek</b>	Substitute Panel Member, EULEX Judge

<b>Secretariat</b>	
<b>John J. Ryan</b>	Senior Legal Officer
<b>Noora Aarnio</b>	Legal Officer
<b>Katica Kovacevic</b>	Interpreter/Translator (Serbian-English)
<b>Kushtrim Xhaferi</b>	Interpreter/Translator (Albanian-English)

## ANNEX 2 Statistics 2010 - 2016

	2010	2011	2012	2013	2014	2015	2016	Total
<b>Registered cases in total</b>	<b>16</b>	<b>28</b>	<b>23</b>	<b>27</b>	<b>42</b>	<b>16</b>	<b>36</b>	<b>188</b>
<b>Finalized cases in total</b>	<b>6</b>	<b>30</b>	<b>10</b>	<b>20</b>	<b>28</b>	<b>27</b>	<b>19</b>	<b>140</b>
Admissible			2		1	8	0	<b>11</b>
Inadmissible	6	22	10	13	22	12	9	<b>94</b>
Violation	0	2	0	7	2	4	9	<b>24</b>
No violation	0	5	0	0	1	10	0	<b>16</b>
Strike out	0	1	0	0	3	1	1	<b>6</b>

	<b>As of 31 December 2016</b>
Pending	48
Communicated to HoM	15

**ANNEX 3 Decisions of the HRRP 2010-2016**

<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>2010-01</b>	Djeljalj Kazagić	Alleged failure to act by EULEX Prosecutor, property matter	Violation
<b>2010-02</b>	Sadik Thaqi	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
<b>2010-03</b>	Osman Mehmetaj	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
<b>2010-04</b>	Feti Demolli	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
<b>2010-05</b>	Mursel Hasani	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
<b>2010-06</b>	Latif Fanaj	Alleged failure to act by EULEX Prosecutor, death in Dubrava Prison 04/09/2003	No violation
<b>2010-07</b>	Blerim Rudi	Alleged failure of the Financial Intelligence Unit to comply with the order of the Independent Oversight Board to reinstate the complainant.	Violation
<b>2010-08</b>	Delimir Krstić	Alleged failure to act by EULEX police and prosecutor, property matter	Inadmissible
<b>2010-09</b>	Burim Ramadani	Alleged non-functioning of the court system, Kitcina-case	Inadmissible
<b>2010-10</b>	Horst Proetel	Unsuccessful candidature for a EULEX position	Inadmissible
<b>2010-11</b>	Laura Rudi	Private financial claim against a EULEX employee	Inadmissible
<b>2010-12</b>	Hunaida Pasuli	Unsuccessful candidature for a EULEX position	Inadmissible
<b>2010-13</b>	An EULEX- Employee	Internal EULEX dispute with regard to performance appraisal and personal relationship with supervisor	Inadmissible
<b>2010-14</b>	Lulzim Gashi	Unsuccessful candidature for a EULEX position	Inadmissible

<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>2010-15</b>	Faton Sefa	Failure to get reinstated to previous employment (private sector), alleged failure to implement court rulings	Inadmissible
<b>2010-16</b>	Cyma Agovic	Transferred from EULEX - Failure of the EULEX judges to fairly examine the complainant's case	Inadmissible
<b>2011-01</b>	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
<b>2011-02</b>	Chamalagai Krishna Bahadur	Alleged Failure to Act	Inadmissible
<b>2011-03</b>	Afrim Mustafa	Dispute with regard to closing down a private radio station and confiscation of radio equipment	Inadmissible
<b>2011-04</b>	Besim Berisha	Complaint about living conditions in Dubrava Prison	Strike out
<b>2011-05</b>	SH.P.K "Syri"	Alleged denial of the right to a fair hearing, freedom of expression and equality before the law, SCSC.	Inadmissible
<b>2011-06</b>	Milazim Blakqori	Alleged non-enforcement of a decision, failure to act by EULEX	Inadmissible
<b>2011-07</b>	Case W	Alleged violation of Article 6 Convention	Violation
<b>2011-08</b>	Anton Rruka	Alleged denial of the right to a fair hearing, freedom of expression and equality before the law, SCSC.	Inadmissible
<b>2011-09</b>	Mirkovic Bojan	Alleged unlawful dismissal from EULEX	Inadmissible
<b>2011-10</b>	Dejan Jovanović	Alleged undue delay in the proceedings before the SCSC.	Inadmissible
<b>2011-11</b>	Srecko Martinović	Alleged excessive use of force, inhumane treatment and denial of right to a fair trial	Inadmissible
<b>2011-12</b>	Novica Trajković	Alleged excessive use of force	Inadmissible
<b>2011-13</b>	S.M.	Alleged excessive use of force, denial of right to a fair trial and failure to respect the right to private life	Inadmissible
<b>2011-14</b>	Lindita Shabani	Alleged denial of the right to private and family life	Inadmissible

<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>2011-15</b>	Samedin Smajli	Alleged denial of a fair trial and undue delay in proceedings	Inadmissible
<b>2011-16</b>	Avdyl Smajli	Alleged denial of a fair trial and undue delay in proceedings	Inadmissible
<b>2011-17</b>	Faik Azemi	Alleged denial of the right to a fair hearing	Inadmissible
<b>2011-18</b>	Mykereme Hoxha	Alleged failure to act by EULEX Prosecutor	Inadmissible
<b>2011-19</b>	Sefer Sharku	Alleged failure to respect a binding court-decision.	Inadmissible
<b>2011-20</b>	X and 115 other complainants	Alleged failure by EULEX to protect the health and life of persons living in the lead contaminated Roma camps.	Violation
<b>2011-21</b>	Ventor Maznikolli	Alleged undue delay by EULEX judges in scheduling a Supreme Court hearing.	Inadmissible
<b>2011-22</b>	Hysni Gashi	Alleged denial of a fair trial and alleged incompetence of EULEX judges.	Inadmissible
<b>2011-23</b>	Hashim Rexhepi	Alleged violations of the right to liberty and the right to a fair trial.	Inadmissible
<b>2011-24</b>	Predrag Lazić	Alleged failure to get a fair hearing in a reasonable time.	Inadmissible
<b>2011-25</b>	Shaip Gashi	Alleged deprivation of German disability pension.	Inadmissible
<b>2011-26</b>	Njazi Asllani	Alleged non-enforcement of a decision, failure to act by EULEX	Inadmissible
<b>2011-28</b>	Case Y	Alleged breach of the right to respect private and family life.	Inadmissible
<b>2012-01</b>	Qamil Hamiti	Alleged denial of the right to a fair hearing	Inadmissible
<b>2012-02</b>	Arben Zeka	Alleged failure to adjudicate property case	Inadmissible
<b>2012-03</b>	Rexhep Dobruna	Alleged denial of the right to a fair hearing.	Inadmissible
<b>2012-04</b>	Izet Maxhera	Property related dispute with EULEX in Mitrovica.	Inadmissible
<b>2012-05</b>	Fatmir Pajaziti	Alleged breach of right to liberty and right to a fair trial.	Inadmissible
<b>2012-06</b>	Case Z	Alleged violations of Articles 10 and 11 UDHR, Articles 5 and 6 Convention, Article 9 ICCPR and Article 6 CAT	Inadmissible

<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>2012-07</b>	Case I	Alleged failure to act by EULEX Prosecutor and EULEX Police	Inadmissible
<b>2012-08</b>	Case U	Alleged violation of Article 6 of the European Convention on Human Rights (Convention)	Inadmissible
<b>2012-09</b>	Case A	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 Convention	Violation
<b>2012-10</b>	Case B	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 Convention	Violation
<b>2012-11</b>	Case C	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 Convention	Violation
<b>2012-12</b>	Case D	Alleged violations of Articles 2, 3, 8, 9, 10 and 11 Convention	Violation
<b>2012-13</b>	Bejtush Gashi	Alleged violations of Article 6 Convention and Article 1 of Protocol 1 Convention	Inadmissible
<b>2012-14</b>	Valbone Zahiti	Alleged violation of Article 8 Convention	Violation
<b>2012-15</b>	Shefqet Emerllahu	Alleged violation of Article 6 Convention, failure to investigate	Inadmissible
<b>2012-16</b>	Kristian Kahrs	Alleged violation of Article 6 Convention, failure to act	Inadmissible
<b>2012-17</b>	Case E	Alleged violations of Articles 5 and 6 of Convention	Inadmissible
<b>2012-18</b>	Hamdi Sogojeva	Alleged violation of Article 1 of Protocol 1 of the Convention	Inadmissible
<b>2012-19</b>	Case H	Alleged confiscation of property	Violation
<b>2012-20</b>	Case G	Alleged violations of Articles 3, 10, 11 Convention and Article 1 of Protocol 1 Convention	Violation
<b>2012-21</b>	Mirko Krlić	Alleged violations of Article 9 Convention and Article 2 of Protocol 4 Convention	No violation
<b>2012-22</b>	Zoran Stanisić	Alleged violations of Articles 3, 6 and 8 Convention and Article 1 of Protocol 1 Convention	Violation
<b>2012-23</b>	Predrag Blagić	Alleged violations of Article 5 Convention and Article 2 of Protocol 4 Convention	Strike out
<b>2013-01</b>	Case I	Alleged violation of Article 6 Convention	Inadmissible
<b>2013-02</b>	Arsim Krasniqi	Alleged violation of Article 3 Convention	Inadmissible



<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>2013-03</b>	Goran Becić	Alleged violations of Articles 13 and 14 Convention and Article 1 of Protocol 1 Convention	Violation
<b>2013-04</b>	J	Alleged violation of Article 6 Convention (access to justice).	Inadmissible
<b>2013-05</b>	Case K	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-06</b>	Case L	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-07</b>	Case M	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-08</b>	Case N	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-09</b>	Case O	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-10</b>	Case P	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-11</b>	Case Q	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-12</b>	Case R	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-13</b>	Case S	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-14</b>	Case T	Alleged violations of Article 3, 5, 13 and 14 Convention	No violation
<b>2013-15</b>	Gani Zeka	Alleged violations of Article 6 and Article 1 of Protocol No 1 of Convention	Inadmissible
<b>2013-16</b>	Almir Susaj	Alleged violation of Article 3 and 8 Convention	Inadmissible
<b>2013-17</b>	Ramadan Rahmani	Alleged violation of Article 1 Protocol 1 Convention	Inadmissible
<b>2013-18</b>	Jovanka, Dragan, Milan Vuković	Alleged violation of Article 1 Protocol 1 Convention	Inadmissible
<b>2013-19</b>	U	Alleged violation of Article 1 Protocol 1 Convention	Inadmissible
<b>2013-20</b>	Shaip Gashi	Alleged violations of Article 1 of Protocol 1 Convention	Inadmissible
<b>2013-22</b>	Gani Gashi	Alleged violation of Article 6 Convention	Inadmissible
<b>2013-23</b>	V	Alleged violations of Article 6 and Article 1 of Protocol 1 of Convention	Inadmissible
<b>2013-24</b>	Emin Maxhuni	Alleged violation of Article 1 of Protocol 1 of Convention	Inadmissible

<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>2013-25</b>	Milorad Rajović	Alleged violation of Article 1 of Protocol 1 Convention	Inadmissible
<b>2013-26</b>	Selami Tarku	Alleged violation of Article 1 of Protocol 1 Convention	Inadmissible
<b>2013-27</b>	Shaban Kadriu	Alleged violations of Article 6 and Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-01</b>	Nexhat Qubreli	Alleged violations of Article 5 and Article 6 Convention	Inadmissible
<b>2014-02</b>	Milica Radunović	Alleged violation of Article 6 Convention	Inadmissible
<b>2014-03</b>	Case A.Z.	Alleged violation of Articles 3, 8 and 13 Convention	Strike out
<b>2014-04</b>	Tomë Krasniqi	Alleged violation of Article 1, 3, 6, 14 and 17 Convention, Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-05</b>	Mazlam Ibrahim	Alleged violations of Article 6 and Article 1 of Protocol 1 of Convention	Inadmissible
<b>2014-06</b>	Case B.Y.	Alleged violation of Article 6 Convention	Inadmissible
<b>2014-07</b>	Fitore Rastelica	Alleged violation of Article 6 Convention	Inadmissible
<b>2014-08</b>	C.X.	Alleged violation of Article 6 Convention	Inadmissible
<b>2014-09</b>	Rifat Kadribasic	Alleged violations of Article 6 and Article 1 of Protocol 1 of Convention	Inadmissible
<b>2014-11</b>	Case D.W.	Alleged violation of Articles 2 and 3 Convention	admissible
<b>2014-18</b>	Fitim Maksutaj	Alleged violation of Article 6 Convention	Violation
<b>2014-19</b>	Fahri Rexhepi	Alleged violations of Article 6 and Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-20</b>	Mensur Fezaj	Alleged violation of Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-21</b>	Shefki Hyseni	Alleged violation of Article 5 Convention	Strike out
<b>2014-22</b>	Ismajl Krapi	Alleged violation of Article 6 Convention	Inadmissible
<b>2014-23</b>	Shaip Selmani	Alleged violation of Article 6 Convention	Inadmissible
<b>2014-24</b>	Case J.Q.	Alleged violation of Article 6 Convention	Inadmissible

<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>2014-25</b>	Nuha Beka	Employment Dispute	Inadmissible
<b>2014-28</b>	Selatin Fazliu	Alleged violation of Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-26</b>	Ajet Kaçiu	Alleged violation of Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-27</b>	Qerim Begolli	Alleged violation of Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-29</b>	Shemsi Musa	Alleged violation of Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-30</b>	Abdilj Sabani	Alleged violation of Article 1 of Protocol No 1 Convention	Inadmissible
<b>2014-31</b>	Case K.P.	Alleged violation of Article 6 Convention	Inadmissible
<b>2014-32</b>	L.O.	Alleged violation of Articles 2 and 3 Convention	Violation
<b>2014-33</b>	Arben Krasniqi	Alleged violation of Articles 5 and 6 Convention	Inadmissible
<b>2014-34</b>	Rejhane Sadiku Sylja	Alleged violation of Articles 2 and 3 Convention	admissible
<b>2014-36</b>	Case Z.A.	Alleged violation of Article 1 of Protocol No 1 Convention	inadmissible
<b>2014-38</b>	Slavica Mikic	Alleged violation of Article 13 Convention	Inadmissible
<b>2014-39</b>	Musli Hyseni	Alleged violation of Article 5 Convention	strike out
<b>2014-40</b>	Avni Hajdari	Alleged violation of Article 6 Convention	Strike out
<b>2014-41</b>	Liridona Mustafa Sadiku	Alleged violation of Articles 2 and 3 Convention	Inadmissible
<b>2014-42</b>	Bujar Zherka	Alleged violations of Article 6 and Article 1 of Protocol No 1 Convention	Inadmissible
<b>2015-01</b>	Milos Jokic	Alleged violations of Article 5, 6, 8, 9, 10 and 12 of Convention	inadmissible
<b>2015-03</b>	Dekart Shkololli	Alleged violation of Article 8 Convention	inadmissible
<b>2015-07</b>	Dobrivoje Radovanovic	Alleged violation of Article 6, and Article 1, Protocol No.1 Convention	inadmissible

<b>Case</b>	<b>Complainant</b>	<b>Subject matter</b>	<b>Result</b>
<b>2015-08</b>	Afrim Berisha	Alleged violation of Article 1 of Protocol No 1 Convention	inadmissible
<b>2015-09</b>	Driton Hajdari	Alleged violation of Article 6, and Article 1, Protocol No.1 Convention	inadmissible
<b>2015-10</b>	Shaban Syla	Alleged violation of Article 6 Convention	inadmissible
<b>2015-13</b>	Case W.D.	Alleged violation of Articles 6 and 8 Convention	inadmissible
<b>2016-03</b>	Afrim Islami	Alleged violation of Article 6, and Article 1, Protocol No.1 Convention	inadmissible

#### ANNEX 4 Schedule of outreach campaign and other activities in 2016

	Date	Location	Event	Panel	Secretariat	Organisation
1.	03/02/16	Office for Kosovo and Metohija, Bosniak Mahalja, North Mitrovica,	Meeting with Zlata Radovanovic, Coordinator of Office for Kosovo and Metohija and Bratislava Radovanovic, Officer of the Office for Kosovo and Metohija		John J Ryan Katica Kovacevic	Office for Kosovo and Metohija
2.	01/03/16	HRRP Building	Meeting with Mr John Rouse, Chief of Staff EULEX Kosovo	Magda Mierzewska, Guenael Mettraux, Katja Dominik Elka Filcheva-Ermenkova	Paul Landers Joanna Marszalik	
3.	01/03/16	HRRP Building	Meeting with Ms Heidi Lempio Legal Officer, Linde Bryk Legal Officer and HRLO Interns, Ms Laura Fournier and Alessio Gracis	Magda Mierzewska, Guenael Mettraux, Katja Dominik Elka Filcheva-Ermenkova	Paul Landers Joanna Marszalik	
4.	14/04/16	Mitrovica	Meeting with Mr Kadri Osaj, Lawyer		Paul Landers Kushtrim Xhaferi	
5.	16/05/16	UNMIK HQ, Pristina	Meeting with Ms Miriam Ghalmi, Senior Human Rights Adviser, Chief of Human Rights Section, O/SRSG, UNMIK		John J Ryan	
6.	24/05/16	Kosovo Law Centre Pristina	Meeting with Mr Bekim Blakaj, Executive Director, Kosovo Law Centre		John J Ryan Kushtrim Xhaferi	
7.	01/06/16	Decani Monastery, Peja/Pec	Meeting with Fr Sava Janjic, Abbot of Visoki Decani Monastery		John J Ryan Katica Kovacevic	
8.	02/06/16	Office for Kosovo	Meeting with Zlata Radovanovic		John J Ryan Katica	

		and Metohija, Bosniak Mahalja, North Mitrovica	, Coordinator of Office for Kosovo and Metohija and Bratislava Radovanovic, Political Affairs Officer of the Office for Kosovo and Metohija Metohija		Kovacevic	
9.	06/06/16	Association for Missing and Kidnapped persons in Gracanica	Meeting with Ms. Silvana Marinkovic, Gracanica Head of Association for Missing and Kidnapped persons in Gracanica		Paul Landers Katica Kovacevic	
10.	21/06/16	Association for Missing and Kidnapped persons Mitrovica North	Meeting with Milorad Trifunovic, Head of Association for Missing and Kidnapped persons Mitrovica North		Paul Landers Katica Kovacevic	
11.	23/06/16	Centre for Peace and Tolerance, Milosa Obilic, nn 10500 Gračanica /Gračanice	Meeting with Nenad Maksimovic, Executive Director, Center for Peace and Tolerance & ors Seminar – Presentation of research paper on social entrepreneurship		John J Ryan Katica Kovacevic	
12.	04/07/16	Association for Missing and Kidnapped persons in Velika Hoca	Meeting with Negovan Mavric, Orahovac, Velika Hoca Head of Association for Missing and Kidnapped persons in Velika Hoca		Paul Landers Katica Kovacevic	
13.	13/07/16	“Mothers Appeal” Association	Meeting with Nestrete Kumnova,		Paul Landers Shpresa Gosalci	

		n Gjakova	representative of the “Mothers Appeal” Association Gjakova		Kushtrim Xhaferi	
14.	14/07/16	Association for Missing and Kidnapped persons in Strpce	Meeting with Ms. Dragana Milatovic, Brezovica, Strpce Head of Association for Missing and Kidnapped persons in Strpce		Paul Landers Katica Kovacevic	
15.	15/07/16	“26 March 1999” Association in Krushe e vogel	Meeting with Agron Limani Chair of the “26 March 1999” Association in Krushe e vogel		Paul Landers Shpresa Gosalci Kushtrim Xhaferi	
16.	18/07/16	“27 April 1999” Association in Gjakova/Djakovica	Meeting with Haki Sadriu & Engjell Berisha, Chair and Vice-Chair of the “27 April 1999” Association (Mejë village) Gjakova		Paul Landers Shpresa Gosalci Kushtrim Xhaferi	
17.	17/10/16	EUSR HQ, Kosovo Street No. 1, Pristina	Meeting – European Union Special Representative Nataliya Apostolova and Shaban Murturi	Guenaël Mettraux, Elka Ermenkova	John J Ryan	EUSR HQ, European Union Special Representative
18.	17/10/16	HRRP Building	Meeting with Ms Alexandra Papadopoulou, EULEX Head of Mission, Elaine A Paplos, Marianne Fennema, and Heidi Lempio	Guenaël Mettraux, Elka Ermenkova	John J Ryan	
19.	28/10/16	EEAS Building, Brussels	Meeting with Mr Alexis Hupin, Desk Officer - Kosovo, CPCC, European External Action Service in the	Magda Mierzewska	John J Ryan	

			EEAS			
20.	28/10/16	EEAS Building, Brussels	Meeting with Ms Jana Kaliminova, Chairperson of CivCom and Mr Alexis Hupin, Desk Officer - Kosovo, CPCC, European External Action Service in the EEAS	Magda Mierzevska	John J Ryan	
21.	28/10/16	Justus Lipsius Building, Brussels	Meeting with member states representatives of the CivCom Working Group	Magda Mierzevska	John J Ryan	
22.	28/10/16	EEAS Building, Brussels	Meeting with Mr Bert Vermessen, Deputy Civilian Operations Commander & Chief of Staff, CPCC AND Mr Alexis Hupin, Desk Officer – Kosovo	Magda Mierzevska	John J Ryan	
23.	06/12/16	North Mitrovica, Bosnjak Mahala	Meeting with Zlata Radovanovic , Coordinator of Office for Kosovo and Metohija and Bratislava Radovanovic, Political Affairs		John J Ryan, Noora Aarnio and Katica Kovacevic	Office for Kosovo and Metohija
24.	01/12/16	HRRP Building	Meeting with Declan O'Mahony Team Leader and Dule Visovac Deputy Team Leader of EU funded project for the further support to refugees and displaced persons in Serbia		John J Ryan	
25.	22/12/16	Hotel Sirius	Expert's Roundtable, Justice and the People Campaign		Noora Aarnio and Kushtrim Xhaferi	