

EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO (EULEX)

HUMAN RIGHTS REVIEW PANEL

RULES OF PROCEDURE

Chapter 1. General provisions

Rule 1. Aim of the Rules of Procedure

The Rules of Procedure aim to set out the rules to be followed by the Human Rights Review Panel and those appearing before it in procedures covered by the Accountability Concept Paper dated 29 October 2009 on the establishment of the Human Rights Review Panel.

Rule 2. Definitions

For the purposes of the present rules, unless the context otherwise requires, the meaning of the following terms will be as follows:

- a. "Joint Action" means the Council of the European Union's Joint Action no. 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo;
- b. "Panel" means the Human Rights Review Panel;
- c. "Complainant" means any person, other than EULEX personnel, having submitted a complaint and alleging to be the victim of a violation of human rights by EULEX Kosovo in the conduct of EULEX Kosovo's executive mandate;
- d. "Representative" means the person who represents a complainant in the proceedings before the Panel; and
- e. "HOM" means the EULEX Head of Mission.

Chapter 2. Organisation of the Panel

Rule 3. Members of the Panel

The Panel will be composed of international members. It will be independent in the exercise of its functions.

The Panel will be composed of three members, whereof one will be a EULEX judge. The EULEX judge will have an appointed substitute.

Members of the Panel will serve to the effect that the Panel performs its functions with impartiality and integrity.

Rule 4. Selection procedure and appointment

The two Panel members, other than the EULEX judge, will be selected by way of a call for contributions.

The Panel members will be appointed by the HOM for not less than one year. In the case of the EULEX judge and his/her substitute, the HOM appoints the Panel member following consultations with the Head of the Justice Component. The Head of Justice Component gives his position after consultations with the President of the Assembly of EULEX judges.

Rule 5. Resignation

Resignation of a member of the Panel, or of the substitute of the EULEX judge, will be notified to the Chairperson of the Panel who will transmit it to the HOM.

Rule 6. Election of the Chairperson

The members of the Panel will designate a Panel member as the Chairperson of the Panel through an election procedure in which the substitute member will also participate. In the event of a tie, the vote will be repeated, with the exclusion of the substitute member. Neither the EULEX judge nor his/her substitute may be designated as Chairperson. The term of office of the Chairperson will be one year. He or she may be re-elected.

Rule 7. Functions of the Chairperson

The Chairperson will direct the work of the Panel.

Rule 8. Replacement of the Chairperson

If the Chairperson is unable to carry out his or her duties, or if his or her office falls vacant, the duties of the Chairperson will be carried out by the other member who is not a EULEX judge.

Rule 9. Secretarial support

1. The Secretarial support to the Panel will be provided by the Senior Legal Officer and the staff of the Secretariat.
2. The Senior Legal Officer will, under the authority of the Panel, in particular:
 - a. Assist the Panel and its members in the fulfilment of their duties;
 - b. Be the channel for all communications concerning the Panel; and
 - c. Have custody of the archives of the Panel.

Chapter 3. Functioning of the Panel

Rule 10. Seat of the Panel

1. The seat of the Panel will be in Pristina.
2. The Panel may decide to perform its functions elsewhere in Kosovo if it so sees fit.

Rule 11. Sessions of the Panel

1. The Panel will hold its regular sessions every two months. Extraordinary sessions may be scheduled at the discretion of the Panel.
2. Members who are prevented by illness or other serious reason from attending all or part of any session of the Panel or from fulfilling any other Panel duty will, as soon as possible, give notice thereof to the Chairperson.

Rule 12. Withdrawal

1. A member of the Panel may not take part in the work of the Panel in the consideration of any case if:
 - a. He or she is in a position of conflict of interest;
 - b. He or she has expressed opinions publicly, through the media, in writing, through his or her public actions or otherwise, that are objectively capable of adversely affecting his or her impartiality; or
 - c. His or her independence or impartiality may legitimately be called into doubt for any other reason.
2. In the event of any doubt as to the existence of one of the grounds referred to in paragraph 1, the issue will be decided by the Panel with the exclusion of the member concerned.

Rule 13. Deliberations

1. The Panel will deliberate in private and its deliberations will remain secret. Only the Senior Legal Officer and members of the Secretariat, interpreters, and persons providing other assistance to the Panel may attend its meetings unless the Panel decides otherwise.
2. Minutes of the deliberation will be taken, recording, *inter alia*, the name and the functions of those present to the deliberation.
3. Where it is necessary for the Panel to decide on a point of procedure other than at a scheduled session of the Panel, the Chairperson may direct that the deliberations may take place through electronic means.

Rule 14. Quorum

1. The Panel may decide only if all members are present or in the case of Rule 13, paragraph three, if all members take part in the deliberations by electronic means, with the exception of the provision of paragraph 3.
2. In the case of the resignation or the withdrawal of the member who is the EULEX judge, or his or her absence in the context of Rule 11, paragraph two, the substitute member will temporarily replace him/her.
3. In the case of resignation or the withdrawal of a member different from the EULEX judge, or his or her absence in the context of Rule 11, paragraph two, the Panel can decide with two members being present or taking part in the deliberation by electronic means. In the event of a tie, the member who is not a EULEX judge will have the casting vote.

Rule 15. Voting

The decisions of the Panel will be adopted by a majority of the members taking part in the vote. Abstentions will not be allowed.

Chapter 4. Procedure

A. General rules

Rule 16. Languages

1. The official languages of the Panel will be Albanian, Serbian and English.
2. The authentic version of the decision will be in English. The English version will be translated into Albanian and Serbian.
3. Where a conflict or discrepancy arises between the English version of a document or decision and its Albanian or Serbian version, the English version shall prevail.

Rule 17. Representation of the complainants

Complainants and, as the case may be, their statutory representatives can be represented before the Panel by a lawyer or other representatives of their choice.

Rule 18. Representation of the Head of Mission.

The HOM may make a written submission or an oral presentation to the Panel or authorize a member of the Mission for that purpose.

Rule 19. Action in specific cases

1. The Panel may, of its own motion or at the request of a complainant or the Head of Mission, take any action it considers expedient or necessary for the proper performance of its duties.
2. The Panel may ask one or more of its members to take any such action in its name, and in particular, to hear experts or other persons, to examine documents or to visit any location. Such member or members will duly report to the Panel on the outcome of the action taken.

Rule 20. Joinder of complaints

The Panel may, if it considers it to be in the interest of the proper conduct of the proceedings, order the joinder of two or more complaints.

Rule 21. Order of processing of complaints

1. The Panel will deal with complaints in the order in which they become ready for examination.
2. The Panel may decide to give precedence to a particular complaint.

Rule 22. Interim measures

1. The Panel or, where appropriate, its Chairperson may, at the request of a complainant, or at its own discretion, propose to the HOM that an interim measure it considers necessary be adopted in the interests of the proper conduct of the proceedings before it. The HOM will take a decision.
2. The Panel may request information from the complainant or other persons on any matter connected with the implementation of any interim measure decided by the HOM.

Rule 23. Time limits

Time limits for information, observations or comments requested from the complainant and the HOM will be set by the Panel.

Rule 24. Costs

There will be no financial charge arising in connection with the filing or processing of a complaint.

B. Complaints

Rule 25. Filing of complaints

1. A complaint may be filed by any person other than EULEX Kosovo personnel who claims to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate. The Panel will not review judicial proceedings before the courts in Kosovo.
2. The Panel will only examine complaints concerning alleged human rights violations that occurred after 9 December 2008 in Kosovo.
3. Complaints must be submitted to the Panel within three months from the date the Panel may receive complaints, or within six months from the date of the alleged violation, whichever is more favourable to the Complainant.
4. Complaints must be filed in writing and be signed by the Complainant.
5. Where a Complainant is represented in accordance with the provisions of Rule 17 a document certifying his/her capacity to represent the Complainant must be presented to the Panel by the representative.

Rule 26. Content of complaints

1. A complaint must set out:
 - a. The identity of the Complainant, including, as appropriate, the name, date of birth, occupation and the address of the person concerned;
 - b. The name, occupation and address of the representative, if any;
 - c. A statement of the relevant facts; and
 - d. A succinct statement of the alleged violations of the relevant human rights instruments.
2. The Complainant must attach documentary evidence, if any, to support the complaint, in particular to show that the admissibility criteria have been satisfied.
3. The Complainant may use the standard complaint format available from the Panel.

Rule 27. Registration of complaints and information to the Head of Mission

1. The Senior Legal Officer will keep a register of the complaints in which will be entered, *inter alia*, the date of registration of the complaint and the date of the termination of the proceedings.
2. Upon registration of a complaint the Head of Mission will be informed.

Rule 28. Designation of a rapporteur

1. The Chairperson will designate a Panel member as a rapporteur, who will examine the complaint.
2. In the examination of the complaint a rapporteur:
 - a. May request the Complainant and the Head of Mission to submit, within a specified period of time, any factual information, documents or other material which is considered to be relevant; and
 - b. Will submit such reports, drafts and other documents as may assist the Panel in carrying out its functions.

C. Examination of the complaint

Rule 29. Inadmissibility decision without communication of the complaint to the Head of Mission

1. The Panel may declare a complaint inadmissible in summary proceedings if:
 - a. It is substantially the same as a matter that has already been examined by the Panel and contains no additional relevant information;
 - b. It is anonymous;
 - c. It has been filed beyond the time limits set out in Rule 25, paragraph three;
 - d. It is manifestly ill founded;
 - e. It is an abuse of the right of complaint.
2. The decision of the Panel on inadmissibility will contain a brief description of the facts of the case as well as the reasons for its decision. It will also state whether the decision was taken unanimously or by a majority vote. Rule 35 will be applied *mutatis mutandis*.

Rule 30. Communication of the complaint to the Head of Mission. Written proceedings

1. If the procedure under Rule 29 is not applied, the Panel may decide to examine the admissibility and merits of the complaint simultaneously or separately.
2. In any case, the Panel will give notice of the complaint to the HOM, inviting EULEX Kosovo to submit written observations on the complaint and, upon receipt thereof, invite the Complainant to submit further observations.
3. The Panel may also request the Complainant to submit any factual information, documents or other material considered to be relevant.

Rule 31. Observations on inadmissibility

Any observations by EULEX Kosovo on inadmissibility of the complaint must be raised in its written observations submitted as provided by Rule 30.

Rule 32. Decision on admissibility.

After receiving the written observations by the HOM and eventual replies, the Panel may decide on the issue of the admissibility of the complaint. Rule 29 paragraph 2 will be applied *mutatis mutandis*.

Rule 33. Written and oral procedure

1. Reviews by the Panel will primarily be based on a written procedure.
2. The Panel may invite the Complainant to submit further evidence and written observations.
3. If the Panel finds that the complaint cannot be reviewed merely on the basis of written submissions but that such review also necessitates oral presentations, the Panel may receive such oral presentations.

The Chairperson will organise and direct oral presentations.

Panel members may question persons engaged in oral presentations before the Panel.

Rule 34. Presentation of the findings.

Upon completion of the review of a complaint, the Panel presents its findings to the HOM, including the Panel's decision on admissibility. Where necessary, the Panel will make non-binding recommendations for remedial action.

Rule 35. Form of the findings.

1. The findings will contain:
 - a. The names of the participating members of the Panel
 - b. The date of the decision;
 - c. A description of the Complainant and his/her representative;
 - d. An outline of the procedure followed;
 - e. A statement of the facts of the case;
 - f. A summary of the submissions received;
 - g. The reasons in points of law;
 - h. The opinion of the Panel
 - i. Where relevant, the recommendations for remedial actions.

D. Evidence

Rule 36. Evidence upon which decisions and findings are based

The Panel will base its decisions and findings only on evidence that it considers to be relevant to the complaint, including evidence it has collected on its own initiative.

Rule 37. Submission of additional evidence by the Complainant

The Complainant may submit additional evidence at any stage during the proceedings. However, the Panel may, when necessary for the proper performance of its duties, set a time limit for the submission of such evidence.

E. Signature, delivery, notification and publication of decisions and findings

Rule 38. Signature

Decisions and findings will be signed by the Chairperson and the Senior Legal Officer.

Rule 39. Delivery

Decisions and findings will be delivered in writing.

Rule 40. Notification

Decisions and findings will be notified to the Complainant and the HOM.

Rule 41. Publication

Decisions and findings will be promptly published on www.hrrp.eu in English, Albanian and Serbian, unless their publication could affect the operational effectiveness of the Mission or the security of the Mission's personnel. The HOM will decide on such cases after consultation with the Panel members.

F. Re-examination of the admissibility of a complaint, revision and rectification of errors in the findings

Rule 42. Re-examination of the admissibility of a complaint

1. In the event of the discovery of a fact, which might by its nature have a decisive influence on the admissibility of a complaint and which, when the decision on the inadmissibility was delivered, was unknown to the Panel and could not reasonably have been known to the Complainant, he/she may request the Panel, within a period of one month after the Complainant became aware of the fact, to re-examine the admissibility of the complaint.
2. The request will specify the decision on the inadmissibility concerned and it must contain the necessary information to show that the conditions laid down in paragraph 1 have been complied with. The request must be accompanied by copies of all supporting documentation.
3. The Panel may refuse the request if no reason exists that warrants its consideration.

Rule 43. Requests for revision of findings

1. In the event of the discovery of a fact, which might by its nature have a decisive influence on the findings and which, when the findings were delivered, was unknown to the Panel and could not reasonably have been known to the Complainant, he/she may request the Panel, within a period of one month after the Complainant became aware of the fact, to revise the findings.
2. The request will specify the findings of which revision is requested and it must contain the necessary information to show that the conditions laid down in paragraph 1 have been complied with. The request for revision must be accompanied by a copy of all supporting documentation.
3. The Panel may refuse the request if no reason exists that warrants its reconsideration.
4. If the Panel accedes to the request, it will communicate its decision to the Complainant and to the Head of Mission and will invite them to submit written comments within a time limit established by the Panel.

Rule 44. Rectification of errors and editorial revision

Without prejudice to Rules 42 and 43, the Panel may rectify clerical errors, errors in calculation or other obvious mistakes on its own motion or at the request of a Complainant or of the HOM. The request is to be submitted within one month of the delivery of a finding.

G. Derogation

Rule 45. Derogation in individual cases

The provisions of this chapter will not prevent the Panel from derogating from them in the consideration of a particular case, as necessary, if the proper performance of its duties so require.

Chapter 5. Final provisions

Rule 46. Matters not governed by the Rules of Procedure

Matters not governed by the present Rules of Procedure will be settled by the Panel having due regard to its functions as a Human Rights Review Panel, the principles of a fair hearing in the sense of Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the Joint Action.

Rule 47. Language versions of the Rules of Procedure

The present Rules of Procedure are adopted in English, being the authentic version. The text will be translated into Albanian and Serbian.

Amended and adopted by the Human Rights Review Panel in Pristina, Kosovo, on 9 June 2010

Members of the Panel:

Ms. Magda Mierzevska (Member)

.....

Mr. Antonio Balsamo (Member)

.....

Mr. Francesco Florit (Member)

.....

Ms. Gabriele Gaube (Substitute Member)

.....

Mr. John J. Ryan (Senior Legal Officer)

.....