



European Union

Human Rights Review Panel

Kosovo

Annual Report

01.01.2011 – 31.12. 2011

Human Rights Review Panel

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Human Rights Review Panel

Foreword:

This is the second annual report of the Human Rights Review Panel (hereafter the Panel) which covers its first full year of operations in 2011. The Panel, established by the European Union on 29 October, 2009, continued with its review of alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate as well as the development of its jurisprudence. The Panel is notably the only mechanism of its kind that deals with alleged human rights violations by a European Union Common Security and Defense Policy (CSDP) mission. It may be viewed as a pilot project that will facilitate the development of new forms of human rights accountability mechanisms in other contexts in the future.

The Panel conducted six sessions during the reporting period and witnessed a significant increase in its case load with the receipt of twenty eight new complaints. The Panel dealt in all with thirty cases during the reporting period and found that EULEX Kosovo had violated human rights in two cases.

In order to raise awareness of its mandate and functions among the Kosovo institutions and the public at large, the Panel intensified its outreach campaign which included the launch of the campaign in Serbia in January 2011. The Panel held numerous meetings with human rights NGOs and conducted visits to third level educational institutions as well as meetings with relevant government ministers and local government/administration officials at regional and municipal level. Several interviews were also conducted with radio, TV and newspaper reporters.

Among the outreach campaign highlights of the year were the Panel meeting with Government Department and Municipal Human Rights and Gender Coordinators and Officers in April and the Secretariat address to several hundred advocates at the Kosovo Chamber of Advocates “Lawyers Day”, both in Prishtinë/Pristina.

However, the main focus of the outreach campaign throughout the year was oriented on the municipal institutions where meetings were held with Mayors of Municipalities, Presidents of Municipal Courts and Minor Offences Courts as well as Station Commanders of Municipal Police Stations or their Deputies or representatives.

There were a number of changes in the composition of the Panel with the resignation of Ms. Gabrielle Gaube and Mr. Francesco Florit. These resignations heralded the appointment of new Panel members and substitute Panel members, Ms. Esma Erterzi, Ms. Anna Bednarek and Ms. Virginia Micheva-Ruseva, respectively. The Panel secretariat also recruited second legal officer, Ms. Stephanie Selg.

I would like to take this opportunity to express my gratitude to all the Panel members, past and present, for their outstanding professional contributions to the work of the Panel during the reporting period. Equally, I would like to express my sincere gratitude to the Head of Mission EULEX and the Head, Human Rights and Gender Office, EULEX for their excellent support, cooperation and assistance throughout the year.

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The Panel shares the idea that an external accountability mechanism is a fundamental component for the largest civilian mission ever launched under the CSDP. The existence of an external and independent human rights review procedure testifies to the EULEX commitment to respect for these rights. This, in turn, can provide inspiration to the Kosovo authorities and promote a culture of accountability in a challenging multi-ethnic context where respect for human rights should be regarded as the foundation stone for the development of democratic institutions. The Panel can also make an important contribution to the success of the EULEX Kosovo mission.

31 January 2012

Antonio Balsamo
Presiding Member
Human Rights Review Panel

1. Introduction

The Human Rights Review Panel, (hereafter the Panel) established by the European Union on 29 October, 2009 continued with its review of alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate throughout its first full year of operations in 2011. The Panel is notably the first and only accountability mechanism that deals with alleged human rights violations by a European Union Common Security and Defense Policy mission.

Throughout the reporting period, the Panel conducted six (6) sessions and received twenty eight (28) new complaints. The Panel reviewed the outstanding balance of ten cases (10) carried over from 2010. The Panel found that eight (8) of these complaints were inadmissible and that EULEX had violated the human rights of complainants in two (2) cases.

The Panel also reviewed twenty (20) of the twenty eight (28) complaints that it received in 2011. Nineteen (19) of these complaints were found to be inadmissible and one (1) complaint was struck out of the list of cases due to a loss of interest on the complainant's part.

The Panel continued with its outreach campaign which included the launch of the campaign in Serbia in January and meetings with human rights NGOs, visits to third level educational institutions as well as meetings with relevant government ministers and local government/administration officials at regional and municipal level.

Of particular note was the Panel meeting with some seventy five (75) Human Rights and Gender Coordinators and Officers from Government Departments and Municipalities in Government Buildings, Prishtinë/Pristina in April and the Secretariat address to several hundred advocates at the Kosovo Chamber of Advocates "Lawyers Day" in the Grand Hotel, Prishtinë/Pristina in June.

The main thrust of the information campaign was focused on municipalities where meetings were held with Mayors of Municipalities, Presidents of Municipal Courts and Presidents of Minor Offences Courts as well as Station Commanders of Municipal Police Stations or their Deputies or representatives. Numerous interviews were also conducted with radio, TV and newspaper reporters.

There were some changes in the composition of the Panel and its Secretariat during the reporting period. The original EULEX judge member and substitute member Mr. Francesco Florit and Ms. Gabrielle Gaube, respectively, resigned from the Panel and new EULEX judge members and substitute members, namely Ms. Esma Erterzi (later resigned), Ms. Anna Bednarek and Ms. Verginia Micheva-Ruseva were appointed. The Panel also recruited Ms. Stephanie Selg, Legal Officer in June 2011.

2. Rules of Procedure

The Panel, bearing in mind its practical experience of Panel procedures in its operations to date, amended and made additions to its Rules of Procedure (ROP) in order to simplify the procedure in its practical application on 21 November, 2011.

The Panel, in the interests of clarity in Rule 25.1 of the ROP, determined that it should clarify that it was not an appellate body in respect of judicial proceedings before the courts in Kosovo. It fulfilled this requirement with the insertion of the words “In consideration of the accountability concept in the OPLAN of EULEX Kosovo” in Rule 25.1 which now reads as follows:

“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. In consideration of the accountability concept in the OPLAN of EULEX Kosovo, the Panel will not review judicial proceedings before the courts in Kosovo”.

The Panel realised early on that the provision in Rule 25.3 that complaints had to be submitted to the Panel within three months from the date on which the Panel may receive complaints had become partially obsolete. The critical date in this instance was 10 June, 2010, the date on which the Panel became operational. This element had thus become obsolete three months later on 10 September, 2010. Rule 25.3 was therefore amended to address the issue and it now reads as follows:

“Complaints must be submitted to the Panel within six months from the date of the alleged violation”.

The Panel also identified the need for a provision to enable it to strike out a complaint if it became evident during the proceedings that the complainant did not wish to continue with the review procedure or if the Panel determined that the continuation of the review would be unjustified on other grounds. Further, in line with general human rights principles the Panel will continue with the examination of a complaint if respect for human rights so requires.

The Panel thus created a new Rule 29 bis which reads as follows:

1. *“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:*

*a. The complainant does not intend to pursue his or her complaint; or
b. For any other reason established by the Panel, it is no longer justified to continue the examination of the complaint”.*

2. *“The Panel shall continue the examination of the complaint if respect for human rights so requires”.*

The Panel furthermore created new Rule 45 bis to enable it to follow up on the implementation of its recommendations by the Head of Mission (HOM) and to publish its follow-up decisions. The new rule reads as follows:

1. *When the Panel has made recommendations for remedial action, the Panel shall follow up on the implementation of such recommendations by the HOM.*
2. *“The Panel’s decision on the implementation of the recommendations by the HOM will be promptly published on www.hrrp.eu in English, Albanian and Serbian”.*

3. The Panel and the Secretariat

3.1. General

There were a number of personnel changes in the composition of the Panel during the reporting period. These changes included the departure of Ms. Gabrielle Gaube, a EULEX international judge and substitute Panel member who completed her assignment with EULEX on 31 December, 2010. Mr. Francesco Florit, Panel member resigned from the Panel on his appointment as the President of the Assembly of the EULEX Judges on 17 April, 2011.

These departures necessitated the appointment of Ms. Esma Erterzi as a Panel member on 27 May, 2011. Ms. Anna Bednarek was appointed as the substitute member to replace Ms. Erterzi on 27 May, 2011. Ms. Erterzi resigned from the Panel on 2 June, 2011 and she was replaced as a Panel member by Ms. Bednarek on 28 June, 2011. Ms. Verginia Micheva-Ruseva was appointed on 28 June, 2011 as the substitute member to replace Ms. Bednarek in that capacity on the Panel. The Panel also recruited Ms. Stephanie Selg as the second legal officer in June, 2011.

3.2. Panel Members

Mr. Antonio Balsamo, an Italian citizen, graduated with a Degree in Law from the Faculty of Jurisprudence, University of Palermo, Italy, in December, 1986. He received his specialisation Diploma in Regional and Local Government Law from the University of Palermo in 1991.

He worked as a judge at the Court of Palermo from 1995 to 2007 and dealt with many important proceedings, including the Giulio Andreotti trial, concerning the intricate relationship that existed between organized crime and public institutions. Mr. Balsamo presided over the Court that ordered the confiscation of assets valued at hundreds of millions of Euros from the Sicilian Mafia in 2002.

Mr. Balsamo was employed by the Italian Supreme Court of Cassation since 2007 until September 2011. He was responsible for the professional training of judges and prosecutors of the Italian Supreme Court.

In September 2011 Mr. Balsamo was appointed as the President of the First Section of the Court of Assize of Caltanissetta, competent for the trials concerning the most

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serious crimes committed in the central district of Sicily and the murders of judges and prosecutors working in Palermo. He also presides over the Court responsible for the forfeiture of assets belonging to mafia groups.

He is a member of the Regional Scientific Committee of the International Institute of Higher Studies in Criminal Science, a member of the Directive Board of the Italian Association of Judges, a director of the review “*La Magistratura*” and a member of the Scientific Committee of the review “*Archivo Penale*”. He is also a Professor of Criminal law in the postgraduate School of Specialisation for the legal profession.

Mr. Balsamo is a judicial expert in European law, human rights and international legal cooperation in criminal matters. He was also a member of the Scientific Committee of the Italian High Council of the Judiciary and of the Commission for the Reform of the Italian Criminal Code. He also participated, as an expert consultant, in European Union projects concerning the reform of the criminal code of Bulgaria as well as the establishment of a Public Prosecutors Office to deal with organised crime and corruption in the FYROM and human trafficking in Turkey.

He edited the book “*Giurisprudenza europea e processo penale italiano*” on the case law of the European Court of Human Rights and its impact on the Italian criminal law procedure. He also published books on hearsay evidence and on antimafia measures, as well as several articles for specialized scientific journals and book chapters on various topics related to the protection of human rights at both national and international level.

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

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

Ms. Mierzewska’s numerous academic publications include: *The European Convention on Human Rights and Fundamental Freedoms: Ten Years after the Ratification*, Council of Europe Information Office Warsaw 2004; *Ten Years On: The Popularity of the Convention in Poland* (co-author), *European Human Rights Law Review*, Issue 4, 2004; *Ten Years On: Voluminous and Interesting Polish Case Law* (co-author), *European Human Rights Law Review*, Issue 5, 2004; *Standards Established in the Case Law of the European Court of Human Rights in Cases Concerning Expropriations and their Application to German Property Claims*, Polish Institute of International Affairs, 2005; *The Process of Reception of the European Convention on the Protection of Human Rights and Fundamental Freedoms in Poland and Slovakia in: The Reception of the European Convention on the Protection of Human Rights*, eds. H. Keller, A. Stone-Sweet, Oxford University Press, May, 2008.

Ms. 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 her 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 with a dissertation on the African Charter on Human and Peoples' Rights in 2008/2009.

Ms. Bednarek worked as a Senior Expert in the Office of the Agent of the Polish Government at the European Commission and Court of Human Rights, Human Rights and National Minorities Division, Legal and Treaty Department of the Polish Ministry for Foreign Affairs, Warsaw, December 2007. She was also a member of the Delegation of the Polish Government for the 54th Session of the United Nations Commission on Human Rights in 1998.

Ms. Bednarek was appointed as a Judge in the District Court of Warsaw in June, 1998 where she served until 2001 and 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, (Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie) 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 has served since January 2009.

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 Human Rights Education Handbook and as a lobbying group coordinator.

Ms. Bednarek was appointed as a Substitute Member of the EULEX Human Rights Review Panel (Panel) by the EULEX Head of Mission on 25 May, 2011 and she was appointed as a Member of the Panel by the EULEX Head of Mission on 12 July, 2011.

3.3. *Substitute Member*

Ms. Verginia Micheva-Ruseva graduated from Sofia University, Bulgaria with a Magisters in Law in 1995 and she passed the Bulgarian State Examination for judicial posts in December, 1995. She also completed various legal courses, including human rights law courses for which she was awarded certificates.

She has served as a judge during her entire fifteen year professional career. She commenced her judicial career as a junior judge, she subsequently served as a

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Municipal Court judge for eight years and she was then appointed as a District Court judge by the High Judicial Council.

Ms. Micheva-Ruseva dealt with civil law and criminal law cases, including violations of human rights in cases of unlawful discrimination, discrimination on grounds of disability, sexual harassment, access to personal information, disclosure of information and remedies, confiscation of assets, etc. at both the Municipal Court and the District Court level.

In addition to her human rights studies during her Master's Degree, she completed numerous courses on the European Convention on Human Rights and Fundamental Freedoms (Convention) and its Protocols and studied the case law of the European Court of Human Rights as a young judge.

She was granted extraordinary leave by her national court in September 2008 when she was appointed to serve as a civil judge at District Court level with the EULEX Mission in Kosovo.

Ms. Micheva-Ruseva was appointed as a substitute member of the EULEX Human Rights Review Panel by the EULEX Head of Mission on 6 July, 2011.

3.4. Former Panel members

Mr. Francesco Florit, an Italian citizen, graduated in Law from the University of Trieste in 1988 where he was awarded first place for his dissertation on taxation law and commercial law. He completed a one year course at the Law University of Edinburgh on the British Courts, the criminal law system and the common law system under the auspices of the European Young Lawyers Scheme in 1998. He passed the Bar Exam in 1990 and worked as a lawyer in the labor law sector. After a further two year study period, he passed the exam to become a judge in 1992.

As a judge, he dealt initially with both criminal and civil law matters and he thereafter specialized in criminal law. He worked as an International Judge with UNTAET in East Timor in the Special Panel for Serious Crime from 2002 to 2005 where he dealt with Crimes against Humanity perpetrated by the Indonesian Army. He was seconded by the Italian Government to the EULEX Rule of Law Mission (Justice Component) in March 2008. Since the start of the Initial Operational Capability on 9 December 2008) he has worked as an International Judge at the District Court of Pristina, dealing with the most serious criminal cases.

Ms. Gabriele Gaube, a German citizen, graduated in law at Trier University, Federal Republic of Germany in 1990. Upon completion of her postgraduate studies as well as the second State Examination she was awarded her postgraduate degree in law in 1993.

She was appointed as an Administrative Court Judge to the Berlin Administrative Court in 1993 where she served until her deputation to the Berlin Ministry of Justice, Department for Education and Training/Law Examination Board, in March 1999. During her deputation she was appointed as a Presiding Administrative Court Judge in January 2003 and as an Administrative High Court Judge in December 2004.

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In January 2005 she resumed her judicial tasks at the Berlin-Brandenburg Administrative High Court (court of appeal and court of last instance with regard to the legislation of the federal states of Berlin and Brandenburg,) where she was appointed Deputy Presiding Judge in January 2007.

She been on extraordinary leave of absence from the Administrative High Court and seconded by the Federal Republic of Germany to EULEX Kosovo since November, 2008. She was appointed as an international judge to the Appeals Panel of the Supreme Court for Kosovo Property Agency cases and Appeal Judge for Kosovo Property Agency Appeals respectively by the International Civilian Representative and the Head of Mission of EULEX Kosovo in January 2009. In April 2010 her appointment was extended to cover general civil proceedings as well as criminal proceedings referring to requests for the protection of legality at the Supreme Court of Kosovo.

Ms. Esma Özkan Erterzi graduated in Law, from 9 September University Izmir, in 1990. She passed the State exams to become a judge in 1991. After the training period, she initially dealt with both criminal and civil law matters. Having served seven years in the Courts, she was assigned to the General Directorate of International Law and Foreign Affairs of the Ministry of Justice of the Republic of Turkey. She represented the said Ministry of Justice in many meetings in international law matters at both national and international level.

She received certificates from the University of Ankara, Turkey, in European Union (EU) law and intellectual property rights in 2003. In the same year, she was granted the Jean-Monnet Scholarship by the European Commission. In 2004, she received her LLM in European Community Law from the University of Essex, United Kingdom, where she studied the European Convention on Human Rights as well as the EU Justice and Home Affairs, as well. Her LLM dissertation was on the “Compatibility of European Law on Illegal Migration with International Human Rights Law”.

In 2005, she was appointed to the Chief Public Prosecution Office of the Court of Cassation as a public prosecutor to deal mainly with cases on the use of drugs; trading in drugs; financial cheque fraud and other financial cheque related issues as well as international affairs of the said Office. She represented the Chief Public Prosecution Office of Turkey at the World Summit of Prosecutors General, Qatar/Doha, in 2005, and at the Conference of European General Prosecutors under the framework of Council of Europe, Moscow, in 2006.

Ms. Erterzi participated in the screening meetings between the European Commission and Republic of Turkey on Chapter 24: “Justice, Freedom and Security” in the negotiations of Turkey’s accession to the European Union. She served as a trainer in the seminars provided to the judges and public prosecutors of Turkey on United Nations document, the so called Istanbul Protocol on how to deal with allegations of torture, how to assess allegations of torture and the clarification of human rights safeguards in international Conventions.

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She has been on extraordinary leave of absence from the High Council of Judges and Public Prosecutors of the Republic of Turkey in order to serve as an international Judge with the EULEX Mission since May 2009. She was appointed as an international judge to the Special Chamber of Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.

Ms. Erterzi was appointed as a substitute member of the Human Rights Review Panel by the Head of Mission EULEX on 10 January, 2011.

3.5. *The Secretariat*

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

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

Ms. Leena Leikas, a Finnish citizen, graduated with a Master of Laws from the University of Turku, Finland and subsequently qualified as a judge. After some years in the Law Drafting Department, Ministry of Justice, she was employed by the Unit for Human Rights Courts and Conventions in the Legal Department, Ministry for Foreign Affairs, where she specialized in international human rights issues. She worked as a case processing lawyer in the European Court of Human Rights in Strasbourg, France from November 2007 to April 2010. She was appointed as a Legal Officer with the Panel Secretariat in May, 2010.

Ms. Stephanie Selg, a Swiss citizen, graduated with Master of Laws from the University of Basel and Geneva, Switzerland. During her studies, she specialized in international humanitarian law and human rights law, obtaining a Certificate of Transnational Law from the University of Geneva. After legal traineeship at the Constitutional Court and Administrative High Court of Basel county and the Appeal Court of Basel, Switzerland, she was employed by the Swiss Government as a legal advisor and senior legal advisor for the Temporary International Presence in Hebron (TIPH), West Bank, Israel. She has been a member of the Swiss National Expert Pool for Civilian Peace building since 2009. From October 2010 until April 2011 she was employed as a legal consultant and research officer in the field of international law

with the Swiss Forum for Human Rights, Bern, Switzerland. She was appointed as a Legal Officer with the Secretariat of the Human Rights Review Panel in June, 2011.

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

Ms. Katica Kovacevic, Kosovo Serbian, was previously employed as Administrative/Language Assistant (Serbian/English) in the Office of the Auditor General from May, 2003 until December, 2008 and as Language Assistant with the Privatization Agency of Kosovo from January, 2009 to November 2010. She commenced her assignment as an Interpreter/Translator with the Panel Secretariat in December, 2010.

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

[See Annex No 1. Staff Table](#)

4. Activities of the Panel

4.1. Public Outreach Campaign 2011

The Panel and the Secretariat developed an outreach campaign action plan for implementation in 2011. In addition to a resumption of outreach campaign activities similar to those conducted in 2010, the main focus of the action plan for 2011 was directed at the municipal institutions.

This included meetings with Mayors of Municipalities, Presidents of Municipal Courts and Minor Offences Courts as well as Station Commanders of Municipal Police Stations or their Deputies or representatives. The Panel and/or the Secretariat representatives met also with Municipal Human Rights and Gender Coordinators and Officers, Court Liaison Officers and Police Community Officers as well as NGOs engaged in the human rights sector during visits to the municipalities.

The format for the outreach campaign meetings in the municipalities in 2011 included a short presentation on the mandate, procedures, functions and operations of the Panel as well as a brief on the applicable law under which the Panel functions. There was also provision for questions and answers as well as discussion and debate when appropriate. The participants were also provided with Panel information materials such as leaflets and posters in the English, Albanian and Serbian languages.

The action plan additionally provided for the launch of the outreach campaign by the Panel in Serbia on 24 and 25 January, 2011. The Panel met with the Assistant Minister, Ministry for Kosovo and Metohija, Government of the Republic of Serbia, the Assistant Minister, Ministry of Justice, Government of the Republic of Serbia and Danish Refugee Council Officials as well as the President of the Association of Missing and Kidnapped Persons.

In accordance with the municipal focus of the action plan in Kosovo, the Panel met with the Human Rights and Gender Coordinators and Officers of Government Departments and Municipalities in Government Buildings on Friday, 8 April, 2011. This meeting was organized by Mr. Habit Hajredini, Human Rights Coordinator, Office of the Prime Minister, Government of the Republic of Kosovo, who also co-chaired the meeting with Ms. Magdalena Mierzevska, Panel member. The meeting was attended by approximately seventy five (75) central government and municipal Human Rights and Gender Coordinators and Officers.

The action plan additionally focused on the youth population and provided for meetings with third level educational institutions. The Panel accordingly met with students of the law faculty in the University of Prishtinë/Pristina on 23 February, 2011 as well as students in the American University of Kosovo on 6 April, 2011.

The Secretariat also addressed the Kosovo Chamber of Advocates on “Lawyers Day” in the Grand Hotel, Prishtinë/Pristina which was attended by several hundred advocates. The Panel and Secretariat furthermore participated in a number of human rights information seminars, conducted three interviews with television, radio and newspaper reporters and held one press conference in 2011.

Finally, the Panel and Secretariat met with and briefed students collectively and individually who were reading for Masters Degrees and PhDs in the wider human rights, international affairs, democratization and criminology disciplines upon request.

[See Annex No. 2 Outreach Campaign](#)

4.2. Induction training for EULEX staff

The Secretariat participated throughout the reporting period in the induction training of incoming EULEX staff members. The Secretariat delivers a power point presentation on the Panel during this training with time allocated for questions and answers. This has proven to be, inter alia, a useful forum to brief future staff members on the mandate of the Panel and to raise the profile of the Panel in the mission area.

4.3. Website

The Secretariat maintains the Panel website at: www.hrrp.eu. The site has been expanded and contains useful information on the mandate, functions, activities and operations of the Panel as well as press releases and the current status of pending and finalised cases, including all the decisions made by the Panel. It also stores information on the applicable human rights law as well as application forms and instructions for filing complaints in the English, Albanian and Serbian languages.

5. Complaints before the Panel

5.1. Caseload

The Panel carried over ten (10) pending cases from 2010. It adopted decisions in all these cases in 2011 and found that three (3) cases were inadmissible, one was admissible and six (6) were partly admissible.

Upon review, the Panel decided that there had been no human rights violations in five of those cases. The Panel, however, decided that EULEX had violated certain provisions of the Convention in two (2) cases, Case No 2010-01, *Mr. Djeljalj Kazagic v EULEX* and Case No 2010-07, *Mr. Blerim Rudi v EULEX*.

Throughout the reporting period, the Panel received twenty eight (28) new complaints. The Panel adopted twenty (20) decisions in those cases, nineteen (19) of which were found to be inadmissible and one (1) complaint was struck out. Eight complaints remain pending and have been carried over into 2012.

[See Annex No. 3 Statistics](#)

5.2. Human Rights Violation by EULEX Kosovo

The Panel adopted its first opinion in the case of *Djeljalj Kazagic v EULEX* (cited above) on 8 April, 2011. The Panel found that there had been a violation of the right to a fair hearing within a reasonable time in contravention of Article 6.1 of the Convention. It also found that there had been a violation of the complainant's right to the peaceful enjoyment of his possessions in contravention of Article 1, Protocol 1 to the Convention.

The Panel recommended the following remedial actions by the HOM:

- undertake all necessary measures for the removal of the state of uncertainty affecting the complainant's peaceful enjoyment of his possessions, by, in particular:
- undertake an examination as to whether the conditions for the complainant's civil case being taken over by EULEX judges, specified in Article 5 paragraph 1 (c) (ii) or (iii) of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in Kosovo were fulfilled;
- establish the reasons for which there seemed to have been no progress in the investigation opened before the EULEX prosecutor as a result of the complainant's request of 25 June 2009;
- examine whether in the circumstances of the complainant's case, the conditions necessary for the EULEX prosecutor's subsidiary competence to arise were met; and

- undertake an examination of what steps could be taken with the assistance or involvement of EULEX in order to ensure the definitive implementation of the judicial decision of 11 December 2007.

5.3. Actions by EULEX Kosovo in the Kazagic case

The HOM informed the Panel of the actions taken by EULEX in the Kazagic case on 26 October 2011 as follows:

EULEX located the files of the case at the Mitrovicë/Mitrovica Municipal Court and assigned a EULEX Judge to conduct an analysis to determine whether the conditions for the complainant's case being taken over by EULEX judges were fulfilled.

After a thorough review of the materials available, it was determined by the assigned judge that the said conditions were not met.

EULEX did not open a prosecutorial investigation into the case, as it had been investigated by a Kosovo prosecutor before the complainant filed his case with EULEX.

Even though EULEX had the legal authority to take over the prosecution of the case, the EULEX Chief Prosecutor, having conducted a careful review of the case file, decided not to take over the case.

Despite the careful and detailed consideration by the EULEX Judges, Prosecutor and the EULEX Justice Component senior management, it was concluded that prioritizing the case would not advance the objectives of EULEX, nor would it improve the overall situation in the Kosovo court system. Therefore the examination of the case was not prioritized, not least because it would be at the expense of other pending cases.

In conclusion, the HOM stated that he understood and sympathized with the complainant's plight and that he was very conscious of the large judicial backlog of cases within the Kosovo court system.

The Panel adopted its second opinion in the case of *Blerim Rudi v EULEX* (cited above) on 8 June, 2011. It found that there had been a violation of the complainant's right to the peaceful enjoyment of his possessions contrary Article 1, Protocol 1 to the Convention.

The Panel recommended the following remedial actions by the HOM:

- A declaration to be made to acknowledge that the circumstances of the case amounted to a breach of the complainant's rights attributable to the EULEX acts in the performance of its executive mandate; and to
- Undertake an examination of the case with a view to determining specific measures that could be taken in order to put an end to the violation.

5.4. Actions by EULEX Kosovo in the Rudi case

The HOM informed the Panel on 3 August 2011 that he had on 1 July 2011 requested the International Director of the Financial Intelligence Centre (hereafter the FIC and the Director) to take steps to reinstate Mr. Rudi in his post and to ensure that he was reimbursed his outstanding salary. He also encouraged the Director to consider withdrawal of the case pending against Mr. Rudi before the Prishtinë/Priština Municipal Court.

Furthermore, the HOM stated, that on 6 July 2011 the Director had formally requested that the pending lawsuit against Mr. Rudi be withdrawn from the Municipal Court. (In fact, the pending case was against the Independent Oversight Board (hereafter IOB) and not against Mr. Rudi).

By a written decision of 13 July 2011 Mr. Rudi was reinstated in his former position until his contract expired on 31 August 2011. In addition, the salary arrears due to Mr. Rudi were formally requested from the Ministry of Finance by the HOM and were duly paid to him.

5.5. Recurrent complaints

Certain discernable patterns have emerged in the complaints filed with the Panel. The majority of complaints allege violations of the European Convention on Human Rights (Convention) and/or its Protocols. The Convention provisions which gave rise to the complaints were:

- Article 2 on the right to life;
- Article 3 on the prohibition of torture;
- Article 5 on the right to liberty and security;
- Article 6 on the right to a fair trial/hearing within a reasonable time;
- Article 8 on the right to respect for private and family life;
- Article 10 on the right to freedom of expression;
- Article 13 on the right to an effective remedy;
- Article 14 on the prohibition against discrimination;
- Article 1 of Protocol No. 1 to the Convention on the protection of property.

5.6. Subject matter of complaints

The most common types of alleged human rights violations filed with the Panel were as follows:

- Allegations of a violation of the right to life (Article 2 of the Convention) in relation to the allegedly inadequate investigation of the cause of death of the inmates who died in the Dubrave/Dubrava Prison incident on 4 September, 2003. Cases of *Sadik Thaqi* (2010-02), *Osman Mehmetaj* (2010-03), *Deti Demolli* (2010-04), *Mursel Hasani* (2010-05) and *Latif Fanaj* (2010-06).
- Allegations of a violation of the right to a fair trial (Article 6 of the Convention) in conjunction with a violation of the right to the peaceful enjoyment of one's possessions, Article 1 of Protocol No. 1 to the Convention. Cases of *Kazagic Djeljalj* (2010-01), *Blerim Rudi* (2010-07) and *Dejan Jovanovic* (2011-10).

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- Allegations of a violation of the right to a fair trial (Article 6 of the Convention) in conjunction with violations of the right to liberty and security (Article 29) and the right to a fair trial (Article 31 of the Kosovo Constitution). Case of *Burim Ramadani* (2010-09).
- Allegations of a violation of the right to a fair trial (Article 6 of the Convention) together with a violation of the right to an effective remedy (Article 13 of the Convention), violation of the right to the peaceful enjoyment of one's possessions (Article 1 of Protocol No. 1 to the Convention) and a violation of the procedural safeguards relating to the expulsion of aliens (Article 1 of Protocol No. 7 to the Convention). Case of *Chamalagai Krishna Bahadur* (2011-02).
- Allegations of a violation of the right to a fair trial (Article 6 of the Convention) in conjunction with a violation of the right to freedom of expression (Article 10 of the Convention). Cases of *SH.P.K "SYRI"* (2011-05) and *Anton Rruka* (2011-08).
- Allegations of a violation of the right to a fair trial (Article 6 of the Convention) together with a violation of the prohibition of torture (Article 3 of the Convention) as well as a violation of the right to liberty and security (Article 5 of the Convention). Cases of *S.M.* (2011-11) and *Novica Trajkovic* (2011-12).
- Allegations of a violation of the right to a fair trial (Article 6 of the Convention) in conjunction with a violation of the prohibition of torture (Article 3 of the Convention) as well as a violation of the right to respect for private and family life. Case of *Slobodan Martinovic* (2011-13).
- Allegations of a violation of the prohibition of discrimination (Article 14 of the Convention). Case of *Delimir Krstic* (2010-08).
- Allegations of a violation of Article 17 (2) of the Universal Declaration of Human Rights (1948): "No one shall be arbitrarily deprived of his property" as well as a violation of the right to the peaceful enjoyment of one's possessions (Article 1 of Protocol No. 1. to the Convention). Case of *Afrim Mustafa* (2011-03).

6. Jurisprudence of the Panel

The Panel developed further its jurisprudence in the review of complaints of alleged human rights violations. The main focus of the Panel's examination of cases was, naturally enough, in the early stages of its operations, directed towards the issue of admissibility. Furthermore, it was aimed at the determination of its jurisdiction and the establishment of the limits of same. In addition, the Panel dealt also with certain substantive issues in the latter stages of the reporting period.

6.1. Admissibility issues

The Panel addressed a number of admissibility issues such as:

6.1.2 Time limits for filing a complaint

The Panel became operational with the adoption of its ROPs on 10 June 2010 and that date was established as the day on which the Panel was authorized to receive complaints.

Frequently, complaints were not filed within the relevant time period as laid down in Rule 25 (3) of the ROPs which provides that:

“Complaints must be submitted to the Panel within three months from the date on which the Panel may receive complaints or within six months from the date of the alleged violation, whichever is more favorable to the complainant”.

Such complaints were deemed to be inadmissible under the provisions of Rule 25 (3). Cases of *Blakqori* (2011-06), *S.M.* (2011-11), *Trajkovic* (2011-12), *Martinovic* (2011-11) and *Gashi* (2011-22).

6.1.3 Admissibility racione personae

Complaints were filed with the Panel which concerned alleged acts perpetrated by bodies/offices/entities which did not implement the executive mandate of EULEX. Rule 25 (1) of the Panel’s Rules of Procedure states inter alia, that:

“A complaint may be filed by any person other than EULEX personnel who claims to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate”

Thus, complaints must concern an act or omission by EULEX in the conduct of its executive mandate. Allegations against the EULEX Human Resources Office were excluded by this rule as issues pertaining to the recruitment and dismissal of staff do not fall within executive mandate of the Mission. Cases of *Proetel* (2010-10), *Pasuli* (2010-12), *An EULEX employee* (2010-13), *Gashi* (2010-14), *Sefa* (2010-15) and *Mirkovic* (2011-09).

Similar claims were filed against various public/private institutions or individuals. Cases of *Rudi* (2010-11), *Sefa* (2010-15), *Mustafa* (2011-03), and *Azemi* (2011-17). All such complaints were found to be outside the jurisdiction of the Panel.

6.1.4 Judicial proceedings before the courts of Kosovo

The Panel is further restricted with regard to admissibility in that it cannot review judicial proceedings before the courts in Kosovo in accordance with the provisions of the OPLAN of EULEX Kosovo. The Panel cannot act as a court of appeal against rulings given by the courts in Kosovo. Accordingly, Rule 25 (1) of the Panel’s ROP states, inter alia, that:

“The Panel will not review judicial proceedings before the courts in Kosovo”.

The Panel held in a number of cases that it “had no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts”.

The Panel consequently found that cases did not fall within the ambit of its executive mandate where the alleged human rights violations originated in judicial decisions or proceedings. Cases of *Gecaj* (2011-01), *SH.P.K "SYRI"* (2011-05), *Blakqori* (2011-06), *Rruka* (2011-08), *Jovanovic* (2011-10), *Shabani* (2011-14), *Smajli* (2011-15 and 2011-16, *Gashi* (2011-22), *Lazic* (2011-24) and *Asllani* (2011-26).

6.2 Substantive issues

The Panel also dealt with a number of substantive issues which are outlined below:

6.2.1 Right to a fair trial (Article 6 (1) of the Convention)

Case No. 2010-01 Djelalj Kazagic v EULEX

The Panel was requested to consider whether the failure to execute a legally binding Municipal Court decision of 14 December 2007 violated the complainant's right to a fair hearing as guaranteed by Article 6 of the Convention in the case of *Djelalj Kazagic v EULEX* (2010-01).

The complainant's property was used, without his knowledge or consent, as collateral for a bank loan drawn down by a third party. That party defaulted on the loan and the bank commenced execution proceedings for the recovery of its assets. The judicial decision to remove the collateral status remained unexecuted as the property continued to be listed as collateral and the complainant's efforts to have this status properly registered were unsuccessful.

On 25 June 2009 the complainant requested a EULEX prosecutor to proceed with a criminal investigation and prosecution in this matter, which request also referred to civil proceedings. The Panel decided that since the complaint in question had been filed on 2 September 2010, it was admissible time wise in accordance with Rule 25(3) of the ROPs.

The Panel observed that the Municipal Court's decision of 14 December 2007 was final and binding and that the authorities had failed to date to take any measures to enforce that decision in the complainant's favor, despite his repeated requests to that effect.

The Panel reiterated the case law of the European Court of Human Rights (Court) to the effect that the right of access to a tribunal guaranteed by Article 6 (1) of the Convention would be illusory if the domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party.

The Panel went on to say that the execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see, among many other authorities, *Hornsby v. Greece*¹).

¹ *Hornsby v. Greece*, judgment of 19 March 1997, Reports 1997-II, pp. 510-11, §§ 40 et seq.

The Panel considered that even though the problems encountered by the complainant were unfortunately rather common, especially in the Mitrovicë/Mitrovica region, this factor did not absolve the respondent of the duty to comply with the requirements stipulated by Article 6 of the Convention in connection with execution of final judicial decisions.

6.2.2 Right to the protection of property (Article 1 of Protocol No.1 to the Convention)

Case No. 2010-01 Djelalj Kazagic v EULEX

The Panel was asked to consider whether the complainant's right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No.1 to the Convention was violated by the failure to execute a legally binding decision of the Municipal Court of 14 December 2007 (Case of *Djelalj Kazagic v EULEX*, cited above).

The Panel held that the concept of "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention had an autonomous meaning which was not limited to the ownership of physical goods and was independent from the formal classification in domestic law. Certain other rights and interests constituting assets could also be regarded as "possessions" for the purposes of this provision.

The Panel observed that the issue that had to be examined was whether the circumstances of the case, considered in their entirety, conferred on the applicant, title to a substantive interest protected by Article 1 of Protocol No. 1 to the Convention (see *Iatridis v. Greece*², *Beyeler v. Italy*³ and *Broniowski v. Poland*⁴).

In response to the HOM's argument that there had been no interference with the complainant's right, the Panel reiterated the case law of the Court to the effect that the impossibility for an applicant to obtain an execution of a final court decision in his or her favour constituted an interference with the right to peaceful enjoyment of possessions, (see *Burdov v. Russia*⁵).

The Panel stated that in assessing compliance with Article 1 of Protocol No. 1 to the Convention, the Court furthermore conducted an overall examination of the various interests at stake, bearing in mind that the Convention was intended to safeguard rights that are "practical and effective".

It was stressed by the Court in that context that uncertainty, whether legislative or administrative or arising from practices applied by the official authorities, was a factor that had to be taken into account in the assessment of the conduct of official authorities.

² *Iatridis v. Greece* [GC], § 54;

³ *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I;

⁴ *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V.

⁵ *Burdov v. Russia*, no. 59498-00, § 40, ECHR 2002-III;

Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time and in an appropriate and consistent manner (see *Beyeler v. Italy*⁶, *Sovtransavto Holding v. Ukraine*⁷ and *Plechanow v. Poland*⁸).

The Panel concluded that even though the complainant did not lose physical control of the property concerned, his right to control it and peacefully enjoy it had been interfered with because the property was being used as collateral for a bank loan taken out by third party without his knowledge. In addition that third party had defaulted on the loan and the bank initiated court proceedings to recover its assets.

Ultimately, the judicial decision that the collateral status of the property be removed was not executed as it continued to be listed as collateral and the complainant's efforts to have this status properly registered were unsuccessful.

Consequently the Panel found that the legal uncertainty rendered the complainant's rights precarious and decided that there had been an interference with his right to the peaceful enjoyment of his possessions under the provisions of Article 1 of Protocol No.1 to the Convention.

Case No. 2010-07 Blerim Rudi v EULEX

The Panel was also asked to consider whether the complainant's right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No.1 to the Convention had been violated by the failure to implement the decision of the Independent Oversight Board (IOB) in the case of *Blerim Rudi v EULEX* (2010-07).

Background

Mr. Rudi was appointed as the Deputy Director of the Financial Investigation Centre (FIC) following a competitive selection process on 1 September, 2008. His contract of employment was terminated on 28 January, 2010 and he filed an appeal against his dismissal with the IOB on 19 February, 2010. On 10 August 2010 the IOB issued a final and binding administrative decision that Mr. Rudi should be reinstated in his position. The FIC decided to stay the implementation of the decision, based on the submission that it would be contrary to the public interest.

Observations of the HOM EULEX

The HOM, in his observations, did not contest the facts as presented by the complainant and summarised by the Panel. He also acknowledged that Article 6 (1) of the Convention was applicable to the circumstances of the case.

He noted, however, that the decision of 10 August 2010 by the IOB was a final administrative decision which was subject to judicial review in accordance with the applicable law. Such review had been initiated by the FIC and the case was pending before the Municipal Court of Prishtinë/Priština.

⁶ *Beyeler v. Italy* [GC], no. 33202/96, § §§ 110 *in fine*, 114 and 120 *in fine*, ECHR 2000-I;

⁷ *Sovtransavto Holding v. Ukraine*, no. 48553/99, §§ 97-98, ECHR 2002-VII;

⁸ *Plechanow v. Poland*, no. 22279/04, § 102, 7 July 2009;

The HOM acknowledged that the pending court proceedings did not prevent the implementation of the final decision of the IOB, which had ordered the complainant's reinstatement to his post.

However, in his additional observations, the HOM submitted that Law No.03/L-192 on the Independent Oversight Board for the Civil Service of Kosovo, which had superseded UNMIK Regulation No 2001/36 on the Kosovo Civil Service of 22 December, 2001 governing the relevant issues, was not applicable to the complainant's case. It was argued that the IOB decision had been issued in accordance with the said UNMIK Regulation whereas Law No.03/L-192 had entered into force on 31 August 2010.

It was further submitted by the HOM that the FIC considered that the complainant's reinstatement would be contrary to the public interest, to the detriment of the Kosovo budget and the protection of confidentiality of the sensitive data accumulated by the FIC. The FIC had decided on these grounds not to reinstate the complainant but rather to temporarily stay the execution of the reinstatement decision in the public interest, with a view to protecting the Kosovo budget as well as confidential FIC documents and information.

The FIC, in essence, had considered that the reinstatement was not mandatory at this stage of the proceedings and decided to await the outcome of the judicial review.

The HOM left it to the discretion of the Panel to determine whether the grounds invoked by the FIC were sufficient to justify its decision not to execute the decision to reinstate the complainant to his post.

The HOM was further of the opinion that the refusal of the FIC to do so did not constitute a violation of Article 6 of the Convention since that decision was under judicial review.

As to the complaint under Article 1 of Protocol No. 1 to the Convention, the HOM noted that a "claim" could constitute a "possession" within the meaning of the said Article if it was sufficiently well established to be enforceable. He referred to the judgment of the Court in the case of *Burdov v. Russia*⁹.

In the final analysis, the HOM considered that Article 1 of Protocol 1 to the Convention had not been violated since the final administrative decision was under judicial review and its enforcement would be contrary to the public interest, the Kosovo budget and the protection of the confidentiality of FIC data.

Observations of the Panel

The Panel determined at the outset that the issue to be examined was whether the circumstances of the case, considered in their entirety, conferred on the applicant, title to a substantive interest protected by Article 1 of Protocol No. 1 to the Convention (see *Beyeler v. Italy*¹⁰ and *Broniowski v. Poland*¹¹).

⁹ *Burdov v. Russia*, no. 59498/00, ECHR 2002-III.

¹⁰ *Beyeler v. Italy*, no. 33202-96, 5 January 2000

¹¹ *Broniowski v. Poland*, no. 31443/96, 22 June 2004

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With regard to the concept of “possessions”, the Panel noted that the expression had an autonomous meaning which was not limited to ownership of physical goods and was independent from the formal classification in domestic law, (see *Kazagic* case summarized above). The Panel held that certain other rights and interests which constituted assets could also be regarded as “property rights”, and thus as “possessions” for the purposes of Article 1 or Protocol No. 1 to the Convention.

The Panel noted that the IOB administrative decision to reinstate the complainant in his post was final and binding and generated for him a legitimate expectation that it would be executed, prior to the final determination of the lawfulness of the termination of his employment contract, which was to be determined in due course through the judicial review. Such an expectation fell within the ambit of the notion of “possessions”.

In so far as the HOM submitted that it was not mandatory to have the decision of 10 August 2010 complied with, the Panel reiterated the point that the first and most important requirement of Article 1 of Protocol No. 1 to the Convention was that any interference by a public authority with the peaceful enjoyment of one’s possession should be lawful.

The second sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention authorised a deprivation of possessions “subject to the conditions provided for by law” only and the second paragraph recognized that States have the right to control the use of property by enforcing “laws”. (see *The former King of Greece and Others v. Greece*¹²).

Article 1 of Protocol No. 1 to the Convention also required that a deprivation of possession had to be in the public interest and that it should pursue a legitimate aim by means which were reasonably proportionate to the aim sought to be realized. (see *Jahn and Others v. Germany*¹³).

Consequently, any such interference had to achieve a “fair balance” between the demands of the general and public interest of the community and the requirements essential for the protection of the individual’s fundamental rights. That fair balance would not be achieved where the person concerned had to bear an individual and excessive burden. (see *Sporrong and Lönnroth v. Sweden*¹⁴)

The Panel observed moreover, that the principle of “good governance” required that where an issue in the general and public interest was at stake, it was incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency. (see *Beyeler v. Italy*¹⁵ and *Megadat.com S.r.l. v. Moldova*¹⁶).

¹² *The former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII);

¹³ *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005;

¹⁴ *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52;

¹⁵ *Beyeler v. Italy*, cited above, § 120;

¹⁶ *Megadat.com S.r.l. v. Moldova*, no. 21151/04, § 72, 8 April 2008.

In this regard, the Panel noted that the Director of the FIC, acting upon advice from EULEX, prevented the complainant from resuming employment with FIC, despite the final IOB decision that he be reinstated in his post. The Panel similarly noted that the FIC did not pay the complainant's salary from 28 February 2010 onwards in accordance with the decision of the IOB.

In conclusion, the Panel was satisfied that the FIC refusal to comply with the various elements of the IOB decision amounted to an interference with the right of the complainant to the peaceful enjoyment of his possessions.

Examination of lawfulness of FIC decision

The Panel next examined whether the failure of the FIC to comply with the IOB decision of 10 August 2010, was lawful, if it served the public and general interest and whether it struck a fair balance between the interests of the community and those of the complainant.

The Panel observed that the complainant was not given any written reasons as why the IOB decision was not executed. It was further noted that the HOM did not provide any justification, based on the concrete facts of the case, as to why the reinstatement of the complainant in his post would compromise the interests of the service.

Likewise, it was not shown that the complainant had been informed of any such factual grounds, either orally or in writing. It was further noted by the Panel that the HOM did not submit any arguments to demonstrate that the FIC refusal had any basis in law.

Only written grounds for that decision, clearly indicating their legal basis with reference to the concrete factual circumstances of the case would have rendered possible an objective *post-hoc* assessment of whether the decision complied with the requirement of lawfulness.

Having regard to the absence of grounds for the contested decision and to the failure to indicate a legal provision that could be construed as its legal basis, the Panel found that the impugned interference with the complainant's right to the peaceful enjoyment of his possessions, in the form of a "legitimate expectation", could not be considered "lawful" within the meaning of Article 1 of Protocol No. 1 of the Convention.

This finding of the Panel on the lawfulness of the FIC decision made it unnecessary to examine whether that interference complied with the additional requirements that had to be met in the case of an interference with the right to the peaceful enjoyment of one's possessions.

Examination of the implementation of the recommendations

In its decisions of 23 November, 2011 the Panel reviewed the implementation of its recommendations by the HOM in the *Kazagic* and *Rudi* cases. The Panel noted that EULEX had undertaken certain measures to address the complainant's situation within the framework of its executive mandate in the *Kazagic* case.

The Panel also noted that EULEX had implemented the substance of the recommendations of the Panel in the *Rudi* case. The Panel is confident that the implementation of its recommendations by EULEX in that case will go some considerable way towards the restoration of the complainant's professional reputation which had been negatively affected by his unjust dismissal. In its conclusion, the Panel declared that EULEX had exercised its functions as appropriate in both instances and decided to close the examination of these two cases.

These decisions may be viewed on the Panel's website www.hrrp.eu in the Albanian, Serbian and English languages.

7. Operational/Administrative/Personnel Matters

7.1 Outreach campaign

The Accountability Concept Document of 29 October, 2009 stated, inter alia, in Para E, that

“...EULEX Kosovo will ensure a proper dissemination of public information on the Panel and its work ...”.

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

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

However, despite the best efforts of the Panel, there is still a certain lack of knowledge of the Panel, its mandate and operations among the general population in some urban and rural areas. It is therefore felt that the broadcast of a TV and radio advertisement in 2012 would assist the Panel in reaching out to the wider urban and rural population, in particular, in the more distant parts of Kosovo.

7.2 Inadmissibility of complaints

A review of the Panel's case load demonstrates that a very high percentage of the complaints were declared inadmissible. This may be partly explained by the limited jurisdiction of the Panel. A perusal of the jurisprudence also reveals that complainants did not adhere to the procedures or heed the limits of the Panel's mandate.

The complaints which were declared inadmissible, contained, inter alia, one of the following shortcomings: complaints were manifestly ill-founded in the sense that they presented no *prima facie* evidence of human rights violations; complaints were filed

after the expiry of the time limit laid down in the ROPs and also that they were incompatible *ratione temporis* with the ROPs as they related to events which had occurred before the establishment of the Panel or the coming into effect of the relevant operational dates.

The Panel will seek to address these issues and shortcomings with an increased emphasis on the provision of information on the admissibility criteria for complaints in the outreach campaign in 2012.

7.3 Staff Matters

One of the Panel legal officers resigned on 6 December 2011 and the Secretariat recently completed interviews for the recruitment of a replacement. There was only one potential seconded candidate among the applicants, so the Secretariat was obliged to conduct interviews of potentially contracted candidates only in the hope that a contracted post might be provided by EULEX.

Thus the shortage of contracted posts for the recruitment of staff members in the Panel continues to present difficulties for the Panel in the current recruitment process for an additional legal officer. The Secretariat also requested EULEX Kosovo to initiate the selection process for a EULEX judge to replace Ms. Bednarek.

7.4 Budget

The Panel does not have a dedicated budget and is entirely dependant on the EULEX budgetary system in this regard. However, this did not hinder the day to day operations of the Panel throughout the reporting period during which, inter alia, it dealt with thirty (30) complaints.

Even though the Panel is entirely satisfied with the budgetary and the other categories of support so generously provided by EULEX, it would be of considerable benefit to Panel operations if the Mission would fund a TV/Radio advertisement etc. Access to its own budgetary resources would also further enhance the actual and perceived independence of the Panel.

The Panel would like to take this opportunity to record its appreciation in respect of the excellent cooperation, administrative support and assistance that it has received from EULEX Kosovo and in particular, from the Human Rights and Gender Office, the conduit through which the Panel communicates and interacts so effectively with EULEX Kosovo

8. Conclusion

The Panel has now completed its first full year of operations. It was a busy year for the Panel during which twenty eight (28) complaints were lodged with it. It dealt with thirty (30) cases, conducted some one hundred and thirty (130) outreach campaign related activities and amended its ROPs.

The Panel is now well established within the organizational structure of the European Union as an effective accountability mechanism for the protection of international

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human rights standards in the European Union's exercise of executive authority in Common Security and Defence Policy Missions.

It thus serves as a means to ensure EULEX accountability for breaches of the European Convention on Human Rights and Fundamental Freedoms as well as other international human rights instruments in its executive authority role in Kosovo and as such, serves, *iter alia*, as an excellent example of human rights accountability for the state institutions of Kosovo.

In conclusion, the Panel constitutes a potential model as a viable and meaningful human rights accountability mechanism for the protection and promotion of human rights when the European Union next exercises executive authority in a Common Security and Defence Policy Mission.

See www.hrrp.eu for further information on the Panel.

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ANNEX 1 Staff table

Panel	
Antonio Balsamo	Presiding Panel Member
Anna Bednarek	Substitute Panel Member, EULEX, Judge 27 May until 28 June 2011 Panel Member 28 June until 14 December 2011
Esma Erterzi	Substitute Panel Member, EULEX Judge 10 January until 27 May 2011 Panel Member 27 May until 2 June 2011
Francesco Florit	Panel Member, EULEX Judge Until 17 April 2011
Gabriele Gaube	Substitute Panel Member, EULEX Judge Until 31 December 2010
Verginia Micheva Ruseva	Substitute Panel Member, EULEX Judge From 28 June 2011
Magda Mierzewska	Panel Member

Secretariat	
John J. Ryan	Senior Legal Officer
Leena Leikas	Legal Officer
Stephanie Selg	Legal Officer From 6 June – 31 December 2011
Shpresa Gosalci	Administrative/Language Assistant (Albanian-English)
Katica Kovacevic	Interpreter/Translator (Serbian-English)
Kushtrim Xhaveri	Interpreter/Translator (Albanian-English)

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ANNEX 2 Schedule of outreach campaign related meetings

January 2011

13 January - Chairman, Kosovo Chamber of Advocates

- Secretariat meeting with Mr. Musa Dragusha, Chairman, Kosovo Chamber of Advocates.

20 January - European Master's Degree in Human Rights and Democratization

- Panel meeting with students on the European Master's Degree Program on Human Rights and Democratisation, European Inter-University Centre for Human Rights and Democratisation, Venice, Italy.

24-25 January - Launch of the outreach campaign in the Republic of Serbia

- Panel and Secretariat launch the outreach campaign in Serbia with meetings in Belgrade and Prokuplje.

The Panel met with Mr. Vladimir Ristic, Assistant Minister, Ministry for Kosovo and Metohija, Government of the Republic of Serbia and Mr. Slobodan Boskovic, Assistant Minister, Ministry of Justice, Government of the Republic of Serbia in Government Buildings, Belgrade on 24 January, 2011.

In addition, an outreach campaign meeting was held with Danish Refugee Council officials in Belgrade and participants at that meeting included representatives of the United Nations High Commission for Refugees as well as NGOs who are active in the human rights sector such as the Balkans Center for Migration, NGO "Sveti Spas" and Group 484.

The Panel's outreach campaign meeting in Prokuplje, Serbia on 25 January was organized by Ms. Snezana Zdravkovic, President, Association of Missing and Kidnapped Persons and attended by family members of missing persons.

27 January - interview with Radio Kosova and Le Courier.

- Mr. Francesco Florit, Panel member conducted an interview with Ms. Serbeze Haxhijaj, Radio Kosova and Le Courier.

February 2011

23 February - Law Faculty, University of Prishtinë/Pristina.

- The Panel held an outreach campaign meeting with approximately fifty (50) law students in the auditorium in the Law Faculty of the University of Prishtinë/Pristina.

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March 2011

02 March - Interview with RTK.

- Mr. Francesco Florit Panel member conducted an interview with Mr. Nenad Radomirovic, RTK.

03 March - Interview with Zeri Newspaper

- Mr. Florit conducted an interview with Ms. Selvije Bajrami, Zeri Newspaper.

The Panel and Secretariat launched the outreach campaign at the municipal level in Gjilan/Gnjilane and Viti/Vitina on 10 March and separate meetings and other associated events were held since then as follows:

10 March – Gjilan/Gnjilane Region and Municipality

- Mr. Zuhdri Haziri, President, District Court;
- Mr. Omer Duraku, Deputy Mayor, Municipal Building;
- Ms. Dragana Maksimovic, NGO, Civil Rights Program, Kosovo;
- Mr. Shaban Azizi, Deputy Station Commander, Police Station and Mr. Ismet Hashani, Police Spokesperson.

10 March Viti/Vitina Municipality

- Ms. Ibadete Hyseny, Human Rights and Gender Officer.

16 March - Ferizaj/Urosevac Municipality

- Ms. Vjollca Krasniqi, Human Rights and Gender Officer, Municipal Building;
- Mr. Fatmir Karaliti, Head of Operations, Police Station;
- Mr. Avni Bytyqi, Executive Director, “Initiative per Progress” (NGO-INPO).

16 March – Kaçanik/Kacanik Municipality

- Mr. Mehmet Ali Hajdini, Deputy Station Commander and Chief Operations Officer, Police Station;
- Mr. Jeton Topalli, Director of Administration, Municipal Building;
- Mr. Ramadan Gudaci, President, Municipal Court and Mr. Kemal Runjeva, Administrator, Municipal Court.

22 March - Ranillug/Ranilug Municipality

- Ms. Bojana Jevtic, Human Rights and Gender Officer.

22 March - Kamenicë/Kamenica Municipality

- Ms. Nazmije Demolli, Human Rights and Gender Coordinator, and Ms. Zejnie Lenjati Human Rights and Gender Officer;
- Mr. Agim Lipovica, Deputy Station Commander, Police Station;
- Ms. Valbone Dervodelli, Administrator, Municipal Court.

23 March – Artanë/Novo Brdo Municipality

- Ms. Sadbere Vllasaliu, Human Rights and Gender Officer, Municipal Building;

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- Mr. Ivica Zivkovic and Mr. Zoran Sumakovic, Municipal Court Liaison Officers;
- Mr. Goran Filic, Investigations Officer, Police Station.

29 March – Graçanicë/Gracanica Municipality

- Mr. Bratislav Trajkovic, Station Commander, Police Station;
- Mr. Trifun Jovanovic, Municipal Court Liaison Officer;
- Mr. Bojan Stojanovic, Mayor, Municipal Building;
- Mr. Sava Smigic, Secretary of the Eparchy, Graçanicë/Gracanica Monastery;
- Mr. Nenad Lazic, Judge, Municipal Court.

29 March – Press conference with Festina TV, Tema TV and Ferizaj Radio Station

- Panel member Francesco Florit held a press conference at INPO (Initiative for Progress) premises, Ferizaj/Urosevac Municipality. The event was organized by Mr. Avni Bytyqi, Executive Director, INPO Ferizaj/Urosevac Region. The interview was conducted by Mr. Besim Idrizi and Mr Shkodran Berisha, Festina TV, Mr. Petrit Ilazi, Tema TV and Mr. Driton Ramadani, Ferizaj Radio Station which covers Ferizaj/Urosevac, Kaçanik/Kacanik and Shtime/Štimlje Municipalities.

April 2011

04 April – Prishtinë/Pristina District and Municipality

- Mr. Abdullah Abazi, Deputy Station Commander, North Station;
- Mr. Isak Ejupi, Station Commander, South Station;
- Ms. Makifete Saliuka, President, Municipal Court;
- Ms. Tonka Berisha, Deputy President, District Court;
- Ms. Premtime Preniqi, Human Rights and Gender Coordinator;
- Mr. Tapio Vanamo, President of the Special Chamber of the Supreme Court of Kosovo.

06 April - American University of Kosovo

- Panel meeting with law faculty students of the American University of Kosovo in the Auditorium, American University of Kosovo, Prishtinë/Pristina.

06 April

- Public outreach campaign meeting with NGOs on the name of “Violence against Women”.

08 April – Government Departments and Municipalities

- Panel address to Human Rights and Gender Coordinators and Officers from Government Departments and Municipalities in Government Buildings, Prishtinë/Pristina..

11 April – Ms. Alexia Pierre, Phd Student in Criminology

- Panel meeting with Ms. Alexia Pierre, Phd. Student in Criminology, University of Liege, Belgium.

14 April – Prishtinë/Pristina Municipality

- Mr. Sami Halimi, Station Commander, Central Police Station;

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14 April - Executive Director, Kosovo Chamber of Advocates

- Mr. Yll Zekaj, Executive Director, Kosovo Chamber of Advocates, Prishtinë/Pristina.

18 April – Vushtrri/Vucitrn Municipality

- Mr. Bajram Mulaku, Mayor;
- Mr. Blerim Hasani, Chief of Operations, Police Station;
- Mr. Fadil Beqiri, Human Rights and Gender Officer;
- Mr. Xhevat Abazi, President, District Court;
- Ms. Aferdita Tahiri, Administrator, Municipal Court.

19 April – Prishtinë/Pristina District

- Mr. Isa Mustafa, Mayor.

May 2011

04 May - Executive Director, Council for the Defense of Human Rights and Freedoms

- Mr. Bexhet Shala, Executive Director, Council for the Defence of Human Rights and Freedoms, Prishtinë/Pristina;

04 May - President of the Constitutional Court.

- Professor Doctor Enver Hasani, President of the Constitutional Court.

06 May - Ms. Jana Bauerova, Masters Student in International Affairs

- Secretariat meeting with Ms. Jana Bauerova, Masters Student in International Affairs, Graduate Institute of International and Development Studies, Geneva, Switzerland.

31 May – Zvecan Municipality

- Mr. Misko Acic Deputy Mayor;
- Mr. Vasovic Predag, Chief Operations Office, Police Station.

31 May – North Mitrovica/e

- Mr. Darko Gusnic, Deputy Station Police Commander.

June 2011

06 June 2011 – HRRP Meeting

- Panel meeting with Mr. Jean Marc Lacourciere, Intern at the Kosovo Law Centre and law student at McGill University, Montreal who is conducting a survey of the human rights and minority rights jurisprudence of the Constitutional Court of Kosovo

10 June – Kosovo Chamber of Advocates

- The Secretariat addressed the Kosovo Chamber of Advocates on “Lawyers Day” in the Grand Hotel, Pristina which was attended by several hundred advocates.

13 June – Strpce/Shterpce Municipality

- Mr. Dragan Ivanovic, Station Commander;

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- Mr. Musa Kandjeli, Judge, Minor Offences Court;
- Mr. Dalibor Jevtic, Adviser and Chief of Cabinet, Office of the Mayor.

16 June - Lipjan/Lipljan Municipality

- Mr. Gani Zhaveli, President Municipal Court;
- Mr. Agim Gashi, Acting Police Station Commander;
- Mr. Shukri Buja, Mayor.

22 June – Fushe Kosovo/Kosovo Polje Municipality

- Mr. Burim Berisha, Mayor;
- Mr. Bekim Zogiani, Deputy Police Station Commander.

22 June – Obiliq/Obilic Municipality

- Mr. Fadil Ferati, Deputy Police Station Commander.

29 June - President, Supreme Court of Kosovo

- Mr. Fejzullah Hasani, President, Supreme Court of Kosovo, Prishtinë/Pristina

30 June – Obiliq/Obilic Municipality

- Mr. Mehmet Krasniqi, Mayor.

July 2011

06 July – Podujeve/Podujevo Municipality

- Mr. Agim Veliu, Mayor;
- Ms. Arjeta Podvorica, Human Rights and Gender Officer;
- Mr. Naim Latifi, Police Station Commander;
- Mr. Aziz Podvorica, President, Municipal Court.

12 July – Shtime/Stimlje Municipality

- Mr. Naim Ismajli, Mayor;
- Mr. Bekim Qeriqi, Deputy Station Commander.

18 July – Chief of Party, Public International Law and Policy Group

- Mr. Henry McGowen, Chief of Party, Public International Law and Policy Group, Kosovo Project, Prishtinë/Pristina;

19 July – Skenderaj/Srbica Municipality

- Mr. Fadil Nura, Deputy Mayor;
- Mr. Agim Idrizi, Deputy Station Commander;
- Mr. Isa Shala, President, Municipal Court.

19 July – Glogovc/Glogovac Municipality

- Mr. Sherif Krasniqi, Deputy Mayor;
- Mr. Bajram Rama, Administrator.

19 July - Director, Centre for Public Safety, Education and Development

- Mr. Sadat Gashi, Director, Centre for Public Safety, Education and Development, (Police School, Vushtrri/Vucitrin).

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26 July - Kline/Klina Municipality

- Mr. Jasahr Gashi, President Municipal Court;
- Mr. Zemun Zegaj, Deputy Mayor;
- Mr. Engjell Prenaj, Deputy Station Commander.

26 July – Malishevo/Maliseve Municipality

- Mr. Haki Krasniqi, Director of Administration;
- Mr. Lulzim Pacarizi, President, Municipal Court;
- Mr. Bekim Begaj, Acting Station Police Commander.

August 2011

04 August – Istog/Istok Municipality

- Mr. Hazbi Bajra, Director of Administration,
- Mr. Qazim Jahi, Deputy Police Station Commander,
- Mr. Bajram Bujupaj, President, Minor Offences Court.

09 August – Suha Reka/ Suva Reka Municipality

- Mr. Arsim Berisha, Police Station Commander;
- Mr. Nuredin Abazi, President, Municipal Court;
- Mr. Refki Bytyqi, Deputy Mayor and Ms. Habibe Bytyqi, Human Rights and Gender Officer

15 August – Meeting with Mr. Astrit Istrefi, Saferworld

- The purpose of the meeting was to discuss the meeting proposed by Mr. Istrefi on 25 July, 2011 between the Panel and civil society organisations (CSOs) in Kosovo.

16 August – Rahovec/Orahovac Municipality

- Mr. Smajl Latifi, Mayor, Rahovec/Orahovac Municipality;
- Mr. Muharrem Perboqi, President, Municipal Court;
- Mr. Fazil Morina, Chief Operations Officer.

22 August – Gjakova/Djakovica Municipality

- Mr. Agim Koci, Deputy Mayor and Ms. Lumnie Shllaku, Human Rights and Gender Officer, Gjakova/Djakovica Municipality;
- Mr. Hilmi Hoxha, Deputy President and Mr. Rudin Elezi, Administrator, Municipal Court, Gjakova/Djakovica Municipality;
- Capt. Bekim Avdiaj, Station Commander, Gjakova/Djakovica Municipality.

September 2011

01 September – Dragash/Dragas Municipality

- Mr. Avni Nebiu, Director of Administration, and Ms. Lindita Kozmaci Piraz, Human Rights and Gender Officer,
- Ms. Sabaheta Kurtezi, President, Municipal Court
- Mr. Fahri Myrtezani, Chief Investigations Unit.

07 September – Decan/Decani Municipality

- Mr. Rasim Selmanaj, Mayor,
- Ms. Safete Tolaj, President, Municipal Court,

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- Lieut. Sejd Dobraj, Station Commander,
- Father Sava, Decan/Decani Monastery.

16 September – Ombudsperson Institution

- Mr. Sami Kurteshi, Ombudsperson Institution, Prishtinë/Pristina

October 2011

11 October – Pec/Peja Municipality

- Mr. Salih Mekaj, President, District Court, Pec/Peja;
- Mr. Bajram Kolic, Deputy Station Commander, Pec/Peja Regional Police Station;
- Bishop Jovan Liplanski, Vicar Bishop of Serbian Patriarch, Pec/Peja Monastery;

18 October – Pec/Peja Municipality

- Mr. Shefqet Uka, Deputy Mayor, Pec/Peja Municipality and Ms. Sebahate Corkadiu, Human Rights and Gender Officer;
- Mr. Fatmir Baloku, Deputy President, Municipal Court, Pec/Peja;
- Capt. Enver Gashi, Station Commander, Col. Ahmet Hasi, Regional Director, Lt. Col. Nexhat Gutic and Lt. Nue Nikolla, Pec/Peja Municipality;

November 2011

02 November – Prizren Municipality

- Mr. Ruzhdi Rexha, Deputy Mayor and Ms. Myvexhele Zuri, Human Rights and Gender Officer, Prizren Municipality;
- Ms. Nexhibe Bala, Administrator, Prizren Municipal Court;
- Capt. Haris Dila, Police Station Commander, Prizren Municipality;

21 November – HRRP meeting with DRC

- Human Rights Review Panel meeting with Ms. Kristen Stec, Danish Refugee Council;

22 November – HRRP meetings with HOM EULEX and Legal Aid Experts

- The Human Rights Review Panel met with the Head of Mission in EULEX HQ in Prishtinë/Pristina;
- Roundtable meeting between Human Rights Review Panel and Legal Aid Experts;

23 November – HRRP meeting with OSCE, COE, ECLO

- The Human Rights Review Panel held a meeting with the representatives of OSCE, COE and ECLO in the HRRP Building. The purpose of these meetings was to establish and enhance the future cooperation between the Panel and above mentioned organizations.

December 2011

08 December

- Secretariat attendance Human Rights Defender Seminar, organized by at UNOHCHR, Prishtinë/Pristina;

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09 December

- Secretariat attendance at Republic of Kosovo Conference on the International Day for Human Rights and Exhibition “My Municipality and Human Rights”, Prishtinë/Pristina;

15 December

- Secretariat attendance at Promotional Ceremony of Legal Publications, Kosovo Law Centre, Prishtinë/Pristina.

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ANNEX 3 Statistics

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

	2010	2011	Total
Registered cases in total	16	28	44
Finalized cases in total	6	30	36
Inadmissible	6	22	28
Violation	0	2	2
No violation	0	5	5
Strike out	0	1	1

Statistics	As of 31 December 2011
Pending	8
Inadmissible	28
Violation	2
No violation	5
Strike out	1
Registered cases in total since June 2010	44

Counterparts in the complaints	
Justice	29
Police	4
Customs	0
Administration of EULEX	5
Private individuals/enterprises	6
Total	44

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ANNEX 4 Decisions of the HRRP

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

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

ANNEX 5 **Rules of Procedure**¹⁷

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.

¹⁷ As amended on 21 November 2011.

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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.

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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

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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. In consideration of the accountability concept in the OPLAN of EULEX Kosovo, 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 six months from the date of the alleged violation.
4. Complaints must be filed in writing and be signed by the Complainant.

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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;

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- 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 29 bis. Striking out the complaint

1. 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
 - a. The complainant does not intend to pursue his or her complaint; or
 - b. For any other reason established by the Panel, it is no longer justified to continue the examination of the complaint.
2. The Panel shall continue the examination of the complaint if respect for human rights so requires.

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.

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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.

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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 4 bis. Follow up on Panel's recommendations

Rule 45 bis

1. Where the Panel has made recommendations for remedial action, the Panel shall follow up on the implementation of such recommendations by the HOM.

2. The Panel's decision on the implementation of the recommendations by the HOM will be promptly published on www.hrrp.eu in English, Albanian and Serbian.

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 21 November 2011

Human Rights Review Panel

Members of the Panel:

Mr. Antonio Balsamo
(Presiding Member)

Ms. Anna Bednarek
(Panel Member)

Mr. John J. Ryan
(Senior Legal Officer)

Ms. Magda Mierzevska
(Panel Member)

Ms. Verginia Micheva-Ruseva
(Substitute Panel Member)