



European Union

Human Rights Review Panel

Kosovo

Annual Report

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Human Rights Review Panel

Human Rights Review Panel

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Human Rights Review Panel

Foreword

This is the third annual report of the Human Rights Review Panel (hereafter the Panel). The Panel, established by the European Union on 29 October, 2009, became operational in June 2010. It continued with its review of alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors as well as the further development of its case-law.

In 2012 the Panel conducted four sessions in addition to a meeting with the CivCom Working Group in Brussels. It witnessed a significant increase in its case load with the receipt of twenty three new complaints. The Panel dealt with seventeen complaints during the reporting period and it was noted that a large percentage of these complaints were inadmissible.

The Panel continued with its outreach campaign with the main effort being focused on human rights NGOs, civil society representatives as well as on church and religious bodies in both Kosovo and Serbia. It also engaged in radio and TV interviews and debates and attended at various human rights related seminars, conferences and round table discussions.

The Panel also conducted its second outreach campaign visit to Serbia where it held meetings at central government level and met with various NGOs in Belgrade and Niš engaged in the human rights sphere in Serbia.

Despite its best efforts to implement its outreach campaign for a third consecutive year, there is still an alarming lack of awareness of the Panel in the wider mission area. The Panel believes that this lacuna can only be addressed by an intensive TV/Radio campaign which it hopes to launch in 2013 allied to an intensification of its regular on-going outreach campaign activities.

As stated earlier, in May 2012 the Panel and the Secretariat reported to the European Union Committee for Civilian Aspects of Crisis Management (CIVCOM) on its activities since its last meeting with the Working Group on 10th June, 2010.

The Panel further launched its newsletter on 30th November. The newsletter informs readership about the activities of the Panel and will help to boost public awareness of its mandate and operations. The newsletter contains information on operational, administrative and legal matters and will be published every two months.

There were a number of changes in the composition of the Panel during the reporting period with the resignation of Mr Antonio Balsamo, Presiding Member upon the completion of his assignment. Ms Magda Mierzewska was subsequently elected as Presiding Member. Ms Anna Bednarek, Panel Member also completed her assignment and was replaced by then Substitute Member, Ms Verginia Micheva-Ruseva.

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Mr Guenael Mettraux replaced Mr Balsamo as a Panel Member and Ms Katja Dominik was appointed to replace Ms Micheva-Ruseva as the then Substitute Member.

There were also some staff changes in the Panel Secretariat with Legal Officers, Ms Stephanie Selg and Ms Leena Leikas resigning. They were replaced by Ms Joanna Marszalik and Mr Florian Razesberger.

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

Magda Mierzevska
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 second full year of operations in 2012. The Panel is notably the first and only independent human rights accountability mechanism that deals with alleged violations by a European Union Common Security and Defence Policy mission.

Throughout the reporting period, the Panel conducted four sessions and received twenty three new complaints. The Panel reviewed the outstanding balance of eight cases carried over from 2011. The Panel found that two of the complaints were admissible, that four were inadmissible and communicated two further cases to the Head of Mission for observations.

The Panel also reviewed ten of the twenty three complaints that it received in 2012. Five of these complaints were found to be inadmissible and a further five were communicated to the Head of Mission.

The Panel continued with its outreach campaign with the main effort being focused on human rights NGOs, civil society representatives as well as on church and religious bodies in both Kosovo and Serbia. It also engaged in radio and TV interviews and attended at various human rights related conferences, seminars and round table discussions.

The Panel also conducted its second outreach campaign visit to Serbia where it held meetings at central government level and met with various NGOs in Belgrade and Niš engaged in the human rights sphere in Serbia.

Despite its best efforts to implement its outreach campaign, there is still an alarming lack of awareness of the Panel in the wider mission area. The Panel believes that this lacuna can only be addressed by an intensive TV/Radio campaign which it hopes to launch in 2013 allied to an intensification of its regular on-going outreach campaign activities.

2. Regulatory Framework

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

The Council Joint Action is the source of authority and power of the EULEX Mission in Kosovo. It lays down the mandate of EULEX and, inter alia, specifies its accountability for human rights in Article 3 (i):

“ensure that all its activities respect international standards concerning human rights and gender mainstreaming”.

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

The establishment of an effective, transparent human rights accountability mechanism was considered to be a fundamental requirement for EULEX Kosovo as a Rule of Law Mission which was endowed with certain limited executive functions.

Such an external accountability mechanism would serve to complement the overall accountability of EULEX Kosovo as provided by the Third Part Liability Insurance Scheme and the EULEX Internal Investigation Unit which were established at the outset.

Thus, the Accountability Concept laid down the mandate of the Panel to review complaints from any person, other than EULEX Kosovo personnel, claiming to be the victim of a violation of human rights by EULEX Kosovo in the conduct of the executive mandate of EULEX Kosovo.

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

2.3. Applicable International Human Rights Instruments

Pursuant to the provisions of the Accountability Concept, the Panel may consider complaints under the following human rights instruments:

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

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

3. The Panel and the Secretariat

3.1. General

There were a number of changes in the composition of the Panel during the reporting period with the resignation of Mr Antonio Balsamo, Presiding Member upon the completion of

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his assignment, whereupon he was replaced as Presiding Member by Panel Member, Ms Magda Mierzewska. Ms Anna Bednarek, Panel Member also completed her assignment and was replaced by then Substitute Member, Ms Verginia Micheva-Ruseva. Mr Guenaël Mettraux was appointed to replace Mr Balsamo as a Panel Member and Ms Katja Dominik was appointed to replace Ms Micheva-Ruseva as the Substitute Member.

There were also some staff changes in the Panel Secretariat with Legal Officers, Ms Stephanie Selg and Ms Leena Leikas resigning upon the completion of their assignments. They were replaced by Legal Officers, Ms Joanna Marszałik and Mr Florian Razesberger.

Panel Members – Biographical Information

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

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

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

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

Members

Ms Verginia Micheva-Ruseva

Ms Verginia Micheva-Ruseva, a Bulgarian citizen, 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.

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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 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 ECHR 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.

Dr Guenaël Mettraux

Dr Guénaël Mettraux, a Swiss citizen has a *Licence en droit* from the University of Lausanne (Switzerland), an LLM in international law from University College London (UK) and a PhD from the London School of Economics and Political Science (UK).

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

He has published extensively in the field of international criminal law. His scholarly works include three books: *International Crimes and the ad hoc Tribunals* (Oxford University Press, 2005), *Perspectives on the Nuremberg Trial* (Oxford University Press, 2008) and *The Law of Command Responsibility* (Oxford University Press, 2009), which was awarded the *Lieber Prize* from the *American Society of International Law*. Dr Mettraux is a member of the Editorial Committee of the *Journal of International Criminal Justice* and the Board of Editors of the *International Criminal Law Review*.

Substitute Member

Ms Katja Dominik

Ms Katja Dominik, a German citizen, studied law and Slavic languages at the University of Goettingen, Germany from which she graduated in 1996. Ms Dominik had an abiding interest in human rights when she commenced her legal studies in the early 1990's. As a law student, she was a member of the association "Geschichtswerkstatt" (history workshop) in

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Goettingen which researched the persecution and deportation of the Jewish population from Goettingen between 1933 and 1945.

Upon her graduation from the University of Goettingen in 1996, she commenced work as a Research Assistant at the Institute for Common State Law and Political Science in Germany. In this capacity, she assisted the Director of the Institute with lectures as well as with numerous scientific publications in Public Law, Constitutional Law, and International Law. She also participated actively with lawyers and law students who were dealing with asylum and other human rights issues from 1996 to 1999.

Ms Dominik was awarded a post graduate scholarship and completed her studies on the legal aspects of the state collapse of the Socialist Federal Republic of the Former Yugoslavia in Zagreb, Croatia in 1998/99. Her dissertation on the subject matter was published in 2001. She also worked regularly during this period as a short term polling monitor and supervisor with the Organization for Security and Cooperation in Europe in Bosnia/Herzegovina.

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

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

Ms Dominik was appointed as an International Judge with EULEX Kosovo in October, 2011 whereupon she was assigned to the District Court Mitrovica where she deals with high profile cases of war crimes, murder, corruption and human trafficking. The Head of Mission EULEX appointed Ms Dominik as the substitute member of the European Union Human Rights Review Panel in January 2012.

Former Panel members who served in 2012

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.

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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 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 Anna Bednarek, a Polish citizen, 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.

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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.

3.2. The Secretariat – Biographical Information

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

Mr John J. Ryan, an Irish citizen, graduated with a Bachelor of Laws, (Hons) in Law and European Studies from the University of Limerick, Ireland, and he holds a post graduate degree as a Solicitor from the Incorporated Law Society of Ireland. He practiced as a Solicitor with Stephen MacKenzie and Co. Solicitors, Dublin, Ireland. He has served with the United Nations in Lebanon, Syria, Israel, Cambodia, Bosnia 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, 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 Joanna Marszalik, a Polish citizen, graduated with A Master of Laws from the Jagiellonian University in Krakow, Poland. For five years she worked as a lawyer in the European Court of Human Rights in Strasbourg, France. Subsequently, she was the Project Manager for the Council of Europe institution building project “Support for Ombudsperson Institution in Kosovo” and the Team Leader of the Council of Europe and European Union project “Transparency and Efficiency of the Judicial System in Ukraine”, which supported reform of the Ukrainian judicial system. She joined the OSCE Mission in Kosovo in December 2010 where she worked as the Senior Human Rights Officer, supervising the Regional Centre in Pristina. She was appointed as a Legal Officer in the Panel Secretariat in April 2012.

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Mr Florian Razesberger, an Austrian citizen, studied law at the Universities of Vienna, Copenhagen and Innsbruck (Magister iuris 2001, Doctor iuris 2005). He worked initially as a Law Clerk at the Regional Court of Innsbruck and he was appointed as an Assistant Legal Officer within the Presidency and Chambers of the International Criminal Court in The Hague. He was subsequently appointed as a Legal Adviser with the British Legal Aid NGO, Africa Middle East Refugee Assistance in Cairo, Egypt. Thereafter he was appointed as a Legal Officer in the judicial reform and human rights sector with the OSCE Missions in Skopje and Sarajevo (where he worked for 5 years). Thereafter he was appointed as a Human Rights Officer and Team Leader for the United Nations Assistance Mission in Afghanistan. He worked as a Human Rights Expert within EULEX before joining the Secretariat of the HRRP.

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.

Former Secretariat Staff who served during 2012

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.

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

4. Activities of the Panel

4.1. Public Outreach Campaign 2012

The Panel and the Secretariat continued with the implementation of the outreach campaign in 2012. The main thrust of the campaign was focused on NGOs, civil society representatives as well as on church and other religious bodies. The Panel also engaged in radio and TV interviews and the Secretariat attended various human rights related conferences, seminars and debates. Notably, the Panel also conducted its second outreach campaign visit to Serbia.

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

During its outreach campaign visit to Serbia in November, the Panel met with representatives of the Office for Kosovo and Metohija, Government of the Republic of Serbia, the Ministry of Justice, Government of the Republic of Serbia as well as Danish Refugee Council Officials and associated NGOs in Belgrade. It also met with the Chairman of the Serbian Veterans Association and the Committee for Human Rights (CHRIS), in Niš, Serbia.

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

[See Annex No. 2 Outreach campaign and other activities](#)

4.2. Induction training for EULEX staff

The Secretariat continued with its participation in the EULEX induction training program for incoming EULEX staff members. The format consists of a power point presentation on the Panel with time allocated for questions and answers. This is a very useful forum to brief future staff members on the mandate of the Panel and to raise the profile of the Panel with EULEX staff members in the mission area. This is considered to be particularly important in that it provides the Panel with an opportunity to brief EULEX staff members in the Executive Division on the accountability implications for breaches of human rights in the exercise of their executive functions. However, the Secretariat has not been able to participate in

this training program since EULEX implemented changes to the format in mid 2012, following the re-configuration of the mission. It is understood that that provision will be made in the future by EULEX so that the Panel/Secretariat can resume its participation in the induction training programme.

4.3. Website

The Secretariat is responsible for the upkeep and maintenance of the Panel website at: www.hrrp.eu. The site contains useful information on the mandate, functions, activities and operations of the Panel as well as press releases and the current status of pending and finalised cases, including all the decisions made by the Panel. It also stores information on the applicable human rights law as well as application forms and instructions for filing complaints in the English, Albanian and Serbian languages. The Secretariat constantly strives to further develop and improve the website.

4.4. Caseload

The Panel carried over eight pending cases from 2011. It adopted decisions in six of these cases and found that two complaints were admissible, that four were inadmissible and it communicated two cases to the Head of Mission. The Panel received twenty three new complaints throughout the reporting period and it examined ten of them. Five of these complaints were found to be inadmissible and a further five were communicated under Rule 30 of the Panel's Rules of Procedure to the Head of Mission who was requested to submit observations on the facts and legal issues involved in the cases.

[See Annex No. 3 Statistics](#)

Recurrent complaints and expansion of remedies

A discernible new trend in the nature of the complaints filed was the invocation of international human rights instruments in addition to the ECHR in the cases received by the Panel during the reporting period.

This pattern includes the utilization of a combination of articles from various instruments in addition to the ECHR and and/or its Protocols:

ECHR and/or its Protocols

The majority of complaints allege violations of the ECHR and/or its Protocols. The ECHR provisions relied on by the complainants 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, home and correspondence;
- Article 9 on the right to freedom of thought, conscience and religion;
- Article 10 on the right to freedom of expression;

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- Article 11 on the right to freedom of assembly and association;
- Article 13 on the right to an effective remedy;
- Article 1 of Protocol No. 1 to the ECHR on the right to the peaceful enjoyment of possessions.

Convention on the Rights of the Child

Articles 6, 24, 28, 29, 31 and 37 of the Convention of the Rights of the Child were also invoked for the first time in a complaint.

International Covenant on Civil and Political Rights

Article 9, paras 2 and 4 of the International Covenant on Civil and Political Rights in relation to arrest and detention were also invoked for the first time.

Universal Declaration of Human Rights

Articles 10 and 11 in relation to the right to a fair and public hearing as well as the right to the presumption of innocence, respectively, of the Universal Declaration of Human Rights were also invoked for the first time.

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

Article 6, paras 1 and 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in relation to the obligations of a State with regard to custody and preliminary investigations, respectively, were also invoked.

4.5. 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 ECHR): Cases of *W. against EULEX*, no. 2011-07 in conjunction with the right to the prohibition of torture, Article 3 and the right to respect for private and family life, Article 8, respectively; *F. against EULEX*, no. 2011-27 in conjunction with the right to the prohibition of torture, Article 3, the right to liberty and security, Article 5 and the right to respect for private and family life, Article 8, respectively; *Y. against EULEX*, no. 2011-28 in conjunction the right to the prohibition of torture, Article 3, the right to respect for private and family life, Article 8, the right to freedom of thought, conscience and religion, Article 9, the right to freedom of expression, Article 10 and the right to freedom of assembly and association, Article 11, respectively; *A. against EULEX*, no. 2012-09, ditto; *B. against EULEX*, no. 2012-10, ditto; *C. against EULEX*, no. 2012-11, ditto; *D. against EULEX*, no. 2012-12, ditto.

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- Allegations of a violation of the right to liberty and security, Article 5, para 1c, 2,3 and 4 ECHR, Case of *Z. against EULEX*, no. 2012-6 in conjunction with the right to a fair trial, Article 6, paras 1, 2, and 3a as well as Article 9, paras 2 to 4 of the International Covenant on Civil and Political Rights in conjunction with Article 6 paras 1 and 2 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.
- Allegations of a violation of the right to a fair trial (Article 6 ECHR): Case of *Ventor Maznikoll against EULEX*, no. 2011-21; *Qamil Hamiti against EULEX*; *Fatmir Pajtazi against EULEX*, 2012-05;
- Allegations of a violation of the right to a fair trial (Article 6 ECHR) in conjunction with a violation of the right to the peaceful enjoyment of one's possessions, Article 1 of Protocol No. 1 to the ECHR: Cases of *Sefer Sharku against EULEX*, 2011-19; *Shaip Gashi against EULEX*, 2011-25; *Rexhep and Avdush Dobruna against EULEX*, 2012-03; *Izet Maxhera against EULEX*, 2012-04
- Allegations of a violation of the right to a fair trial, (Article 6 ECHR) in conjunction with a violation of the right to an effective remedy, Article 13 ECHR, *Case of X. against EULEX*, 2011-20
- Allegations of a violation of the right to a fair trial (Article 6 ECHR) in conjunction with a violation of the right to the peaceful enjoyment of one's possessions, Article 1 of Protocol No. 1 to the ECHR together with the right to be protected by law, Article 7 of the Universal Declaration of Human Rights, Case of *Gani Zeka against EULEX*, 2012-01

5. Jurisprudence of the Panel

The Panel further developed its jurisprudence in the review of complaints of alleged human rights violations. The main focus of the Panel's examination of cases was on issues of jurisdiction and admissibility. Furthermore, the Panel examined numerous procedural issues and also discussed on occasion the merits of complaints, without, however, finding any violations of human rights during 2012.

A detailed Table of Jurisprudence was developed by the Secretariat in the latter part of 2012, listing in detail all decisions so far taken by the Panel (see Annex 6). This table is updated on a regular basis and is also available on the Panel's website.

5.1. Jurisdiction and admissibility

The bulk of the Panel's jurisprudence refers to matters of jurisdiction and admissibility. The Panel was also regularly seized with determinations concerning the limits of its jurisdiction in addition to general issues such as the scope of the reviewing authority of the Panel and the accountability concept:

a. Proceedings before Kosovo courts

On numerous occasions, complainants submitted arguments that their right to a fair hearing was violated. Such proceedings either concerned trials before Kosovo Courts without EULEX judge involvement, (compare *Hamiti against EULEX*, 2012-01, 5 June 2012 at par. 17). Also compare with cases to which EULEX judges were assigned by the President of the Assembly of EULEX judges according to the modalities established by the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo and by EULEX Kosovo.

Clearly cases in which there was no EULEX judge on a panel fall outside of the Panel's jurisdiction. The Panel reiterated its previous approach in such cases and held that: "according to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot review judicial proceedings before the courts of Kosovo".

The Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Those elements are within the sole competence of the Kosovo courts. Furthermore, the Panel already found that "the fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court forms part of the Kosovo judiciary".

Such an approach was followed in *Pajaziti against EULEX*, 2012-05, 4 October 2012 at pars.9-10; *Dobruna against EULEX*, 2012-03, 4 October 2012 at par. 12; *Zeka against EULEX*, 2012-02, 4 October 2012 at par. 21; *Rexhepi against EULEX*, 2011-23, 20 March 2012 at par. 36 and *Maznikolli against EULEX*, 2011-21, 20 March 2012 at par. 15.

b. EULEX actions

In 2012, the Panel reiterated its well-established position in respect of its competence to review acts or omissions by EULEX prosecutors. In the case of *Y against EULEX*, (2011-28, 15 November 2012) a former EULEX staff member alleged that his own security and that of his family was jeopardized by the actions of an EULEX prosecutor who, according to the complainant, had not dealt properly with his security concerns as a potential witness in a criminal case.

The Panel held that "according to Rule 25, paragraph 1, of the Rules of Procedure, the Panel can examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate. The Panel has already established that the actions of EULEX prosecutors or EULEX police are part of the executive mandate of EULEX Kosovo and therefore fall within the ambit of the Panel's mandate (see also for instance, *Lafit Hajan against EULEX*, no. 2010-06, decision of 14 September 2011)." The Panel adopted the same approach in the case of *W against EULEX*, 2011-07, 5 October 2012 at par. 21.

On the other hand, in a property related case in which the complainant requested the Panel to find a violation as EULEX had not taken any interim measures with a view to securing the peaceful exercise of his property rights, the Panel stated that "the mandate of EULEX [did]

not authorize it to take such measures, which [were] within the sole competence of the Kosovo courts. Therefore the issue raised by the complainant does not fall within the ambit of the executive mandate of EULEX Kosovo (*Sharku against EULEX*, 2011-19, 20 March 2012 at pars. 19-20).”

c. EULEX mandate

Medical care, pollution, housing matters, protection of the environment

In the case of *X. and 115 other complainants*, 2011-20, 5 October 2012 the Panel was concerned with the health and living conditions of internally displaced people in Kosovo. During the 1999 conflict, many Roma families from Roma Mahala (also known as the Fabrika or Mitrovica Mahala) and other parts of Kosovo fled to the northern part of Kosovo as a result of inter-ethnic violence and destruction of their homes. Consequently, some 600 internally displaced Kosovo Roma, Ashkali and Egyptians were housed in Internally Displaced Persons (IDP) camps. While the vast majority of the IDPs have been relocated by now, a number still live in lead-contaminated areas.

The living conditions in the IDP camps were and continue to be sub standard. Additionally, it was established as early as 2000 by UNMIK, KFOR and the World Health Organisation (WHO) that as a result of the former mining activities, the area was severely polluted, in particular through lead contamination. According to medical reports, many of those living in the camps had blood lead concentrations exceeding permissible levels.

The complainants submitted that EULEX, as a “governing authority and responsible administrator of the IDP camps since 2008”, knew about the dangerous living conditions but had failed to take any action to relocate the Roma from the camps or to provide them with medical treatment.

In this connection, the Panel observed that EULEX had never been in charge of the IDP camps in Kosovo. In fact, UNMIK had handed over the responsibility for the remaining camps under its authority to Kosovo authorities in 2008.

The Panel reiterated the point that “EULEX is essentially a rule of law mission”. The overall executive mandate of EULEX did not extend to activities of an administrative nature with respect to housing matters, the provision of health care, combatting pollution, the protection of the environment or matters of social policy. Consequently, management or responsibility for the administration of IDP camps was not, and never had been within its competence or responsibility.

Hence, the issues raised by the complainants relating to the current general living conditions prevailing in the camps, environmental pollution, alleged damage to the complainants’ health, insufficient medical care and failure to relocate the inhabitants of the camp did not fall within the ambit of the executive mandate of EULEX Kosovo.”

Nevertheless, without prejudging the merits of the complaint, the Panel declared the case admissible with respect to the issue of access to justice under Article 6 ECHR and will render its decision on the merits in 2013.¹

a. Time limits

The Panel established 10 June 2010 as the date upon which it had become authorized to receive complaints as its Rules of Procedure were adopted on that date. The Panel has noted heretofore that complaints were sometimes not filed within the time-limit 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” (since amended).

In the case of *Y. against EULEX*, 2011-28, (15 November 2012 at par. 25-33), the Panel made reference to the approach of the European Court of Human Rights (ECtHR), stating that: “[A]s to the date *ad quem*, the ECHR has frequently found that the six-month time-limit within which to file a complaint with that Court starts to run on the date following the date on which the final decision in a case has been pronounced in public, or on which the applicant or his representative was informed of it. Furthermore, in situations where no remedy was available, that time-limit was also held to run from the date on which the act complained of took place or the date on which the applicant was directly affected by or became aware of such an act or had knowledge of its adverse effects. As to the duration of the six-month period, it has been consistent practice for the ECtHR to find that it expires six calendar months later, regardless of the actual duration of those calendar months (see, *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002 and *Otto v. Germany* (dec.), no. 21425/06, 10 November 2009).”

The Panel considered it appropriate to adopt for its own purposes the approach developed by the ECtHR as to the starting point, calculation and expiry of the six-month time-limit for the submission of complaints. That time limit was also addressed by the Panel during the reporting period in *Rexhepi against EULEX*, 2011-23, 20 March 2012 at pars. 39-42.

b. Victim status

The Panel addressed the issue of victim status vis à vis the fact that criminal proceedings against the complainant were discontinued; the authorities having found that the complainant had no case to answer on the basis of the available evidence, *Rexhepi against EULEX* 2011-23, 20 March 2012 at pars. 43-47. The Panel stated that “in accordance with the case law of the European Court of Human Rights, a person may not claim to be a victim of a violation of his right to a fair trial under Article 6 ECHR which allegedly occurred in the course of proceedings in which the person was ultimately acquitted or which were discontinued (see, ECHR, *Osmanov and Husseinov v. Bulgaria* (dec.), nos. 54178/00 and 59901/00, 4 Septem-

¹ Various issues arising out of the same circumstances were already examined by UNMIK’s Human Rights Advisory Panel; compare therefore *N.M. and others*, Case no. 26/08. at www.unmikonline.org/hrap/Eng/.

ber 2003; *Witkowski v Poland* (dec.), no. 53804/00, 3 February 2003; *Oleksy v. Poland* (dec); no. 64284/01, 28 November 2006).

Consequently “any procedural shortcomings which may have occurred in the investigation must be considered to have been rectified by the discontinuation of the proceedings and clearing of the complainant’s name.”

5.2. Procedural matters

As outlined in its Table of Jurisprudence (see Annex 6) the Panel declared its position on a number of procedural matters.

a. Proposal to apply interim measures by EULEX

The Panel, for the first time, proposed to the HoM that interim measures be implemented in accordance with the provisions of Rule 22 of its Rules of Procedure. In *W against EULEX*, 2011-07, 5 October 2012, the complainant submitted that EULEX violated his rights under the ECHR by sending his statements, against his will, to the authorities in Serbia. He stated that he felt threatened as his name had been revealed to Serbian authorities whom he did not trust.

Without prejudging the merits of the case, the Panel declared the case admissible. The Panel also proposed to the HoM that EULEX Prosecutors assigned to this case be invited to request their Serbian counterparts to return copies of any documents provided to them which contained the name of or referred to the complainant. This proposal was to encompass the two statements provided to EULEX by the complainant.

Furthermore, the Panel proposed that the concerned EULEX Prosecutors be invited to request their Serbian counterparts:

- i. To destroy copies of the above-mentioned documents and to redact the complainants name and information in other documents that could lead to the identification of the complainant; and
- ii. To give notice to EULEX Prosecutors that this had been done, and
- iii. Not to disclose to any suspect or defendant any information provided by the complainant to EULEX.

The Panel will deliver its decision in regard to the merits of this case in the course of 2013.

5.3. Merits

a. No violation of Article 2 and Article 8

In the case of *Y. against EULEX*, the complainant alleged that EULEX actions and omissions infringed Article 2 of the ECHR protecting the right to life as well as article 8, the right to private and family life. In this instance, a former EULEX staff member submitted that his own

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security and that of his family was jeopardized by the actions of an EULEX prosecutor who, did not properly address his security concerns as a potential case witness. One of the complainant's main causes of concern was that his identity had allegedly been revealed by an international newspaper article about the so called "Medicus" case which related to organ trafficking in Kosovo.

The Panel reiterated the fact that "the first sentence of Article 2 of the ECHR enjoins the authorities not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, among other authorities, *L.C.B. v. the United Kingdom*, 9 June 1998, par. 36, Reports of Judgments and Decisions 1998-III).

By the same token, the essential objective of Article 8 ECHR is to protect the individual from arbitrary interference by public authorities. Any such interference under Article 8.1 must be justified under the exceptions listed in Article 8.2, inter alia, as being "in accordance with the law" and "necessary in a democratic society". According to the ECtHR settled case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities (see, among many other authorities, *Olsson v. Sweden* (No. 1), 24 March 1988, § 67, Series A no. 130). In addition, there may also be positive obligations inherent in effective "respect" for private life. These obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of relations between individuals, including the implementation, where appropriate, of specific measures (see, among other authorities, *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91)."

The Panel went on to state that "[i]n the present case, in so far as the complainant alleges a disclosure of information contained in the article resulting from the actions or omissions by EULEX, the Panel observes that no evidence has been submitted to it to show that any information provided by the complainant to EULEX Prosecutors was given to any third party in violation of his rights. Nor has it been shown that there were leaks of confidential information concerning the complainant's identity that would have been attributable to EULEX. In any event, the Panel observes that the impugned article about the "Medicus case" referred to the complainant and to the events in 2008 only in a most general manner. It did not contain any personal or indeed circumstantial details allowing one to establish or to even hazard a guess at the identity of the individual who witnessed an alleged victim collapsing at Pristina airport. Furthermore, the complainant failed to refer to any circumstances or facts that would allow one to accept that any third parties had identified him on the basis of the impugned article or that any threats had been made against him.

Hence, the Panel could not accept that the information contained in that article originated from EULEX and amounted to an interference with the complainant's rights or disclosed a lack of respect for his private or family life within the meaning of Article 8 ECHR, let alone his and his family's right to life protected by its Article 2."

6. Operational/Administrative/Personnel Matters

6.1. 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 higher profile.

However, despite the best efforts of the Panel, there is still a certain lack of awareness and knowledge of the Panel, its mandate and operations among the general population in some urban and many rural areas. It is therefore felt that the broadcast of a TV and radio advertisement in 2013 would greatly assist the Panel in reaching out to the wider urban and rural population, in particular, in the more remote parts of Kosovo.

6.2. Inadmissibility of complaints

As in previous years, the Panel found that a high percentage of the complaints were inadmissible. These complaints contained, inter alia, 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 Panel’s Rules of Procedure and also that they were incompatible *ratione temporis* with the Rules of Procedure as they related to events which had occurred before the establishment of the Panel.

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

The Panel will seek to address these issues and shortcomings with an increased emphasis on the provision of information on admissibility criteria for complaints in the outreach campaign in 2013.

6.3. Staff Matters

One of the Panel legal officers resigned on 6 December 2011 and the Secretariat carried out interviews for the recruitment of a replacement. There was only one potential seconded candidate among the list of applicants. Thus the Secretariat was obliged to conduct interviews of potentially contracted candidates as well as the potential seconded candidate in the hope that a contracted post might thereafter be allocated by EULEX Kosovo.

The shortage of contracted posts for the recruitment of staff members in the Panel presented ongoing problems for the Panel in the subsequent recruitment process for an additional legal officer. This staff issue was one of the general problems which were highlighted with regard to the functioning of the mission in various international fora, that is, EULEX Kosovo preference for seconded staff members over contracted staff members.²

6.4. Budget

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

Apart from that, the Panel is very satisfied with the various categories of support provided by EULEX, but it must be re-emphasised that access to its own budgetary resources would greatly assist it in its operations and 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 and the overall administrative support and assistance that it has received so far from EULEX Kosovo and in particular, for the outstanding service provided by the Human Rights and Legal Office, inter alia, it being the conduit through which the Panel communicates with EULEX Kosovo.

7. International Commentary on the Human Rights Review Panel

The Human Rights Review Panel was the subject of international commentary, on various issues during the reporting period. Of particular note was the article written by Ms Mariya C. Nikolova, a PhD Student on "The European Union Human Rights Review Panel: A Unique EULEX Accountability Mechanism".

² See therefore also Special Report no.18 by the European Court of Auditors, page 38, item 89 under <http://eca.europa.eu/portal/pls/portal/docs/1/17766744.PDF>

Having outlined the mandate, procedure and case law of the Panel, Ms. Nikolova, went on to discuss, *inter alia*, its operations, advantages and likely future challenges. She noted that while the Panel was unable to recommend the award reparations, the mechanism represented a much needed forum to provide redress for violations which would otherwise remain unaddressed. Its establishment also represented a concrete reaffirmation of the premise that international organizations in the exercise of executive powers also have human rights responsibilities and that victims have a right to access to justice for violations attributable to such organizations.

7.1. Advantages of the Panel

In outlining the advantages of the Panel the author, firstly, stated that the Panel, almost by virtue of its existence alone, was bringing a degree of transparency into the work of EULEX, which was unprecedented for other EU or UN missions around the world. It therefore represented not only an important forum for the redress of violations, but it also served as a mechanism for self-regulation and improvement within the EU presence itself.

Secondly, the author was of the view that the Panel had already delivered on its promise to provide concrete reasoned findings, and had performed expeditiously and impartially.

Thirdly, she said that through its outreach campaign, the Panel was not simply providing information to civil society and public officials about its mandate, procedures and operations. The Panel also sought to cultivate general awareness of fundamental human rights and of the mechanisms for redress. This initiative in turn, served the educational objective of reaffirming the value of, and trust in, the rule of law. She said that this state of affairs could only further EULEX's own primary objective in Kosovo.

7.2. Challenges for the Panel

The author was of the opinion that it was premature as yet to make any judgments or draw any conclusions about the effectiveness of the work of the Panel and she outlined a number of challenges which it faced.

Firstly, this accountability mechanism presently derived its funding completely from the EULEX budget. Yet, real and perceived independence and impartiality could only come about with an independently sourced budget. She said that the question of whether EULEX will explore ways of achieving such independence for the Panel remains an open one.

Secondly, as the case law of the Panel developed, there would arguably be more clarity as to the exact meaning and the scope of the term "executive mandate" of EULEX, which defines the scope of the Panel's jurisdiction. The current record revealed a rather cautious approach, but it will be important for the Panel not to be seen as a mechanism that simply shields or absolves EULEX of responsibility, using a formalistic interpretation of the term "executive mandate".

Thirdly, it remains to be seen how the Panel will attempt to explain to victims that it has no powers to recommend the award of financial compensation for damages suffered or indeed

to issue binding decisions. It has done this very explicitly in its outreach campaign so far, but there will have to be a concerted effort on the part of the Panel to demonstrate that the findings and recommendations that they make to the HOM serve just as an important reparative and remedial function as any material monetary award might serve for complainants.

Fourthly, with regard to the outreach campaign she said that the challenges will continue to relate to informing public authorities and civil society about the exact functions and powers of the Panel and to pre-empt an upsurge of inadmissible complaints due to a lack of awareness of its mandate among the general public.

7.3. Conclusions

The author firstly said that the Panel can become a unique mechanism that ensured a better performance by EULEX and one that can contribute to lessons learned for future EU Missions. This proposition of course would be contingent upon future decisions regarding the Panel's staffing, resourcing and funding as well as the degree to which EULEX is seen to ensure that decisions issued by the panel are implemented and effective remedial measures are put in place.

Secondly, although it was too early to judge the impact of the Panel, its indicators will include the expediency and transparency of the findings, the level of involvement of civil society, the cooperation with the EULEX Head of Mission and the implementation of its recommendations. But by showing that it is willing to expose itself to a degree of human rights accountability, EULEX has already taken a step in the right direction.

Moreover, it should not be forgotten that there are many other, parallel ways to achieve accountability. Notably, legal accountability ought to be primarily ensured by the judicial mechanisms of the participating EU states.

The author concluded by saying that the concept behind the Panel was not only to reaffirm EULEX's own commitment to respect for human rights in Kosovo, but also to promote a culture of accountability among the Kosovo authorities. Whether or not it would be able to do so effectively would depend on the level of real independence it manages to achieve from the EULEX budget, the way in which it defines the scope of its mandate powers, and the extent to which EULEX follows up on its recommendations.

[See Annex No 4. Decisions of the HRRP 2010-2012](#)

8. The future of EULEX and human rights challenges ahead

The recent restructuring of EULEX Kosovo raises a number of concerns associated with the effective protection of human rights. The Panel has identified the following as the most pressing issues to be considered by the EU and EULEX leadership in the context of this process:

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i. The transfer of judicial decision making at this time to judicial panels composed of a majority of local, rather than EULEX, judges might raise the serious issue of an appearance of a lack of impartiality on the part of the judiciary in certain affected communities. The Panel is of the opinion that the matter ought to remain under review in relation to sensitive cases (such as war crimes cases, organized crimes cases, or cases where judges and parties are of different ethnic background) so that, where necessary, EULEX Kosovo could exercise its discretion in ensuring that a majority of EULEX Judges would decide those cases. This, we submit, would contribute to a strengthening of the trust of all relevant communities in the impartiality and independence of the judiciary. Regard should be had in this matter to the possibility of a more active approach by EULEX Kosovo as regards taking over cases pending before Kosovo courts by panels composed, fully or in part, of EULEX Judges.

ii. The discontinuation of direct Mentoring, Monitoring and Advising (MMA) activities conducted on the basis of one-to-one or other individualized approaches has raised concerns about the necessity to ensure an adequate transfer of competence from EULEX Judges and EULEX experts to the local judiciary before downsizing and the phasing out of MMA activities. A premature withdrawal from those responsibilities by EULEX could affect the capacity of the local judiciary to act consistently with the human rights standards applicable in Kosovo, in particular as regards judicial proceedings.

iii. The above issues are raised in the context of the absence of judicial recourse from Kosovo courts to the European Court of Human Rights. This highlights the need for EULEX Kosovo to ensure that high standards of procedural fairness are maintained throughout the judiciary in Kosovo. Effective access to justice by all individuals subject to the jurisdiction of Kosovo courts should remain a priority for EULEX Kosovo. The effective promotion and enforcement of such standards would mitigate concerns associated with the current ineffectiveness of some of the existing means of judicial redress in Kosovo.

iv. The reduction of resources allocated to the judicial aspects of the EULEX mission could negatively affect the length of proceedings and the quality of justice. This would in turn impact negatively upon the rights of litigants and defendants in Kosovo, in particular, their rights to a fair and the prompt resolution of cases. EULEX Kosovo needs to be alert to the requirement to maintain adequate levels of relevant resources (financial and otherwise) so as to ensure that the fairness and quality of judicial proceedings in Kosovo are not negatively affected by EULEX's restructuring and downsizing.

v. EULEX also needs to ensure that the commitment of the EU Member States and, consequently, its own commitment to upholding internationally recognized human rights standards applicable in Kosovo is not merely formal or promissory but real, concrete and effective. The Panel considers that EULEX should, therefore, remain fully engaged in promoting respect for human rights throughout the range of activities undertaken by EULEX.

vi. The Panel is of the view that promoting greater awareness of human rights in the context of the overall EULEX mission should be actively pursued. In that regard, the insufficient visibility of the Panel in the overall restructuring of EULEX, as shown, inter alia, by the fact that information about the Panel's mandate and role was removed from the

induction training for the incoming staff for an extended period of time, is rather unfortunate. It does not sit well with the overall purpose of promoting human rights awareness among members of the Mission. Human rights constitute an inherent element of the rule of law and the Mission staff, coming from different countries and backgrounds, should be aware of it, or, if need be, made aware of it. The Panel invites EULEX to reconsider the role of the Panel in this context and to place greater emphasis on the human rights aspects of its mission in the context of staff training. Staff members from different backgrounds and nationalities often have different notions of how to address human rights issues. Also, the unique role that EULEX possesses due to its executive powers and strengthening functions demands a common approach regarding EULEX's human rights obligations.

Apart from the existing, recently restored, human rights element within the induction training for new mission members as well as the important human rights element within the current Use of Force Training, the Panel invites EULEX to consider the inclusion of specifically tailored human rights training for relevant EULEX sections/units, according to their needs, in addition to the Executive Division and the Strengthening Division.

vii. The Panel also invites EULEX to consider the best means by which it can promote and support the effective judicial enforcement of internationally recognized human rights standards. In this context, the Panel further invites EULEX to consider the possibility of discussing with the competent Kosovo authorities the creation of a new human rights chamber, within or outside existing judicial structures, to reinforce the necessary human rights oversight over the decisions and activities of Kosovo lower courts. Considering the current absence of possibility for Kosovo citizen to bring a complaint to the European Court of Human Rights, the Panel is of the view that the EU and EULEX should consider ways to reinforce and support the judicial efforts to ensure the effective protection of human rights for all those living in Kosovo.

Some of the human rights concerns outlined above (*and others* associated therewith) were echoed in a number of independent reports published in 2012 (see, in particular, the Report of the European Court of Auditors "European Union Assistance to Kosovo Related to the Rule of Law"; and KIPRED's "A Comprehensive Analysis of EULEX: What Next?"). The critical comments made in these reports should be taken seriously and be addressed as a matter of urgency in particular where they pertain to issues of human rights protection.

9. Concluding comments

9.1 Conclusions

The Panel has now completed its third year of operations. During the reporting period the Panel conducted four sessions in addition to meeting with the European Union Committee for Civilian Aspects of Crisis Management (CIVCOM) Working Group in Brussels. It witnessed a significant increase in its case load with the receipt of twenty three new complaints. It dealt with seventeen complaints during the reporting period; a very large percentage of these complaints were found to be inadmissible.

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The Panel continued with the implementation its outreach campaign in various forms. However, it must be stressed, that despite its best efforts, there remains a worrying lack of awareness of the Panel, its mandate and procedures throughout the wider mission area. The Panel believes that this lacuna can only be addressed, inter alia, by a comprehensive TV/Radio campaign which it hopes to launch in 2013, allied to an intensification of its regular on-going outreach campaign activities. With the wisdom of hindsight at this juncture, it is now apparent to the Panel that the effective implementation of an information campaign in a post conflict setting is a most difficult task which requires considerable resources of a human and material nature.

There were quite a number of alterations to the composition of the Panel during the reporting period with the resignation of both the Presiding Member and two EULEX Panel members. The two EULEX Panel members were replaced through an EULEX competitive selection process and an external member was similarly recruited to fill the vacancy created by the departure of the Presiding Member. There were also some staff changes in the Panel Secretariat with the resignation of two legal officers who were duly replaced by the recruitment of two new legal officers. With only one Member serving from the Panel's inception in 2010, Ms Magda Mierzewska, the Presiding Member, the Panel was confronted with the same structural difficulties as those outlined by the European Court of Auditors, which, inter alia, make it difficult for EULEX to develop and maintain institutional memory. The Panel has made every effort to cope with this challenge.

9.2 Recommendations

1. The Panel recommends that the EU and EULEX address as a matter of urgency the requirements of the Panel to facilitate a substantial expansion of its outreach campaign, in particular, the introduction and launch of TV/Radio broadcasts.
2. The Panel recommends that the goal of greater awareness of human rights within the overall EULEX mission be actively pursued. In this context, the Panel recommends that the EU and EULEX insist and ensure that the effective protection of human rights in Kosovo is, and not only remains, a priority in the context of training of new EULEX staff members, but is further extended for relevant EULEX divisions and units to ensure a common understanding of EULEX's human rights obligations by EULEX staff.
3. The Panel recommends that EULEX should take all necessary measures to ensure that all EULEX staff are aware of the need to comply with basic human rights standards in the performance of their duties. In particular, EULEX should endeavor to put in place all necessary mechanisms and allocate resources necessary to deal promptly and effectively with the Panel's requests for information pertaining to complaints filed before the Panel.
4. The Panel recommends that the EU and EULEX make respect for human rights a priority of their phasing-out strategy and also ensure that all necessary procedures and

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mechanisms are in place to guarantee and protect these rights once EULEX has completed its mandate. In particular, the Panel recommends that the EU and EULEX maintain a dialogue with the competent Kosovo authorities on their mid-and long-term strategy with regard to the effective protection of human rights in Kosovo, in particular the rights of minorities. The Panel also recommends that effective access to justice by all individuals subject to the jurisdiction of Kosovo courts be an ongoing priority for EULEX as it phases out its operations in Kosovo.

5. The Panel recommends that the transition in Kosovo courts, in particular in sensitive areas, (such as organised crime; corruption cases; property cases; war crimes cases; human rights cases, generally), from panels composed of a majority of EULEX judges to panels composed of a majority of Kosovo Judges remain under careful review so that, where necessary, EULEX may exercise its discretion to ensure that a majority of EULEX Judges would decide the most sensitive cases.
6. The Panel recommends that the EU and EULEX should ensure that the removal of direct MMA on the basis of one-to-one or other individualized approaches should not interfere with the need for transfer of competence towards and capacity-building of local actors in the field of human rights.
7. The Panel recommends that the EU and EULEX be alert to the need to maintain adequate levels of relevant resources, (financial and otherwise), in order that the fairness and quality of judicial proceedings in Kosovo are not negatively affected by the restructuring, downsizing and eventual phasing out of EULEX Kosovo.
8. The Panel recommends that the EU and EULEX ensure that the commitment of EU Member States and, consequently, its own commitment to upholding internationally recognized human rights standards applicable in Kosovo be real, concrete and effective. The Panel therefore recommends that EULEX remain fully engaged in promotion of respect for human rights throughout the range of activities undertaken by EULEX.

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

Human Rights Review Panel

ANNEX 1 Staff table

Panel	
Antonio Balsamo	Presiding Panel Member 04 May 2010 until 02 May 2012
Magda Mierzewska	Panel Member From 04 May 2012 Presiding Panel Member From 04 October 2012
Verginia Micheva Ruseva	Substitute Panel Member, EULEX Judge From 28 June 2011 until 11 January 2012 Panel Member From 12 January 2012
Guenael Mettraux	Panel Member From 01 October 2012
Katja Dominik	Substitute Panel Member, EULEX Judge From 12 January 2012

Secretariat	
John J. Ryan	Senior Legal Officer
Leena Leikas	Legal Officer From 17 May 2010 until 16 May 2012
Stephanie Selg	Legal Officer From 6 June – 31 December 2011
Joanna Marszalik	Legal Officer
Florian Razesberger	Legal Officer
Shpresa Gosalci	Administrative/Language Assistant (Albanian-English)
Katica Kovacevic	Interpreter/Translator (Serbian-English)
Kushtrim Xhaferi	Interpreter/Translator (Albanian-English)

ANNEX 2 Schedule of outreach campaign and other activities**Human Rights Review Panel****Outreach campaign and other activities for 2012**

Date	Location	Event	Panel	Secretariat	Organi- sation
09/03/12	Hotel Pristina	UNDP Seminar		John Ryan	UNDP
19/03/12	Rron Restaurant	Meeting with Head of Mission (HoM) EULEX-Kosovo	Antonio Balsamo Magdalena Mierzewska Verginia Micheva-Ruseva	John Ryan Leena Leikas	HRRP
19/03/12	HRRP	Students of the European Master Program - European Inter-University Centre for Human Rights and Democratization, Venice	Antonio Balsamo Magdalena Mierzewska Verginia Micheva-Ruseva	John Ryan Leena Leikas	HRRP
20/03/12	HRRP	Meeting with Mr. Joel Mermet, Head of UN OHCHR in Kosovo	Antonio Balsamo Magdalena Mierzewska Verginia Micheva-Ruseva	John Ryan Leena Leikas	HRRP
29/03/12	Gracanica Municipality	Meeting with Municipal Court Liaison Officer		John Ryan Katica Kovacevic	HRRP
07/05/12	Brussels	Panel meeting with European Union Committee for Civilian Aspects of Crisis Management (CIVCOM)	Magdalena Mierzewska	John Ryan	HRRP/EU
22/05/12	Hotel Emerald	Seminar Transitional Justice		John Ryan	
04/06/12	European Commission Liaison Office	Meeting with Mr. Samuel Zbogor, EU Special Representative	Magdalena Mierzewska Verginia Micheva-Ruseva Katja Dominik	John Ryan Joanna Marszalik	HRRP
19/06/12	Tiffanys Restaurant	Kosovo Law Centre (KLC) Legal Publications		John Ryan	Kosovo Law Centre
20/06/12	Ombudsperson's Office	Meeting with Mr. Sami Kurtishi, Ombudsperson of Kosovo		John Ryan	HRRP
29/06/12	Hotel Pristina	Seminar -Mental Disability Rights		John Ryan	
05/07/12	Gracanica	Meeting with Kosovo Policy Action Network (KPAN)		John Ryan Katica Kovacevic	HRRP
12/07/12	Gracanica	Meeting with Kosovo Policy Action Network (KPAN)		John Ryan	HRRP
21/07/12	Gracanica Monastery	Meeting with Father Sava Smigic		John Ryan Katica Kovacevic	HRRP
23/07/12	Peja/Pec Monastery	Meeting with Vicar Bishop of the Serbian Patriarch		John Ryan Katica Kovacevic	HRRP
23/07/12	Peja/Pec Monastery	Meeting with Mother Superior		John Ryan Katica Kovacevic	HRRP

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19/09/12	Gracanica Monastery	Meeting with Father Sava Smigic		John Ryan Joanna Marszalik Katica Kovacevic	HRRP
19/09/12	Kamenica Municipality	Meeting with Human Rights and Gender Officers - Nazmije Demolli and Zejnije Lenjani		John Ryan Joanna Marszalik Katica Kovacevic Kushtrim Xhaferi	HRRP
21/09/12	Str. Nicholas Church, Pristina	Meeting with Father Darko Marinovic		John Ryan Joanna Marszalik Katica Kovacevic	HRRP
27/09/12	HRRP Building	Meeting with Massimo Morati and Zoran Popovic (Europeaid/129209/C/SER/RS)	Verginia Micheva-Ruseva	John Ryan Florian Raz- esberger	HRRP
04/10/12	Gracanica	Interview with Kim Radio	Magdalena Mierzewska	John Ryan	HRRP
04/10/12	HRRP	Meeting with Mr Nicholas Hawton, Head of EULEX Press and Information Office	Magdalena Mierzewska Guenael Mettraux Verginia Micheva-Ruseva Katja Dominik	John Ryan Joanna Marszalik Florian Raz- esberger	HRRP
04/10/12	HRRP	Meeting with Mr Peter Bach, Head of EULEX Strengthening Division	Magdalena Mierzewska Guenael Mettraux Verginia Micheva-Ruseva Katja Dominik	John Ryan Joanna Marszalik Florian Raz- esberger	HRRP
12/10/12	HRRP Building	Meeting with Ms. Kristen Stec, Danish Refugee Council Representative, Kosovo		John Ryan	HRRP
14-15/10/12	Peja/Pec Monastery	Seminar - The Balkans and the Middle: Are They Mirroring Each Other?		John Ryan Katica Kovacevic	EULEX, KFOR, Head of Orthodox Church
24/10/12	HRRP Building	Meeting with Massimo Morati (Europeaid/129209/C/SER/RS)		John Ryan Joanna Marszalik	HRRP
13/11/12	Belgrade/Serbia	Meeting with Ministry of Justice	Magdalena Mierzewska Guenael Mettraux Verginia Micheva-Ruseva Katja Dominik	John Ryan Joanna Marszalik Florian Raz- esberger Katica Kovacevic	HRRP
13/11/12	Belgrade/Serbia	Meeting with Office for Kosovo	Magdalena Mierzewska Guenael Mettraux Verginia Micheva-Ruseva Katja Dominik	John Ryan Joanna Marszalik Florian Raz- esberger Katica Kovacevic	HRRP
13/11/12	Belgrade/Serbia	Meeting with Danish Refugee Council, UNHCR, NGO's and Civil Society Representatives.	Magdalena Mierzewska Guenael Mettraux Verginia Micheva-Ruseva Katja Dominik	John Ryan Joanna Marszalik Florian Raz- esberger Katica Kovacevic	HRRP

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16/11/12	Nis/Serbia	Meeting with Serbian Veterans Association and the Committee for Human Rights (CHRIS)	Katja Dominik	John Ryan Joanna Marszalik Florian Raz- esberger Katica Kovacevic	HRRP
23/11/12	Hotel Sirius	Meeting with Mr. Sami Kurtshi, Ombudsperson of Kosovo		John Ryan	HRRP
23/11/12	Hotel Sirius	Seminar – Stop Violence against Women		John Ryan Joanna Marszalik	Ombud- sperson Institu- tion and OSCE
10/12/20 12	Radio Televi- sion of Koso- vo	TV Debate - The Observance of Human Rights in Kosovo	Verginia Micheva-Ruseva	John Ryan	Ombud- sperson
10/12/12	Hotel Sirius	Roundtable discussion - Participation and involvement in human rights are not privileges but rights - International Human Rights Day		John Ryan Florian Raz- esberger	Ombud- sperson Institu- tion, OSCE, CoE, UN- HCHR Office, Kosovo
13/12/12	HRRP Build- ing	Agne Vaicekauskaite, PHD Candidate, Doctorate on EU-LEX- Kosovo, University of Konstanz (Germany)		John Ryan	HRRP
19/12/12	EU Informa- tion Centre in Pristina	ECMI Presentation on the Handbook on the Legal Rights of Vulnerable and Marginalised Groups in Kosovo		Florian Raz- esberger	EU Infor- mation Centre, Kosovo

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ANNEX 3 Statistics 2010 - 2012

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

	2010	2011	2012	Total
Registered cases in total	16	28	23	67
Finalized cases in total	6	30	12	48
Admissible			2*	2
Inadmissible	6	22	10	38
Violation	0	2	0	2
No violation	0	5	0	5
Strike out	0	1	0	1

*Cases not finalized

Statistics	As of 31 December 2012
Pending	19
Admissible	2
Inadmissible	38
Violation	2
No violation	5
Strike out	1
Registered cases in total since June 2010	67

Counterpart in the complaints	
Executive Division	58
Private individuals/enterprises	9
Total	67

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ANNEX 4 Decisions of the HRRP 2010-2012

	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, inhuman 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.	2011-19	Sefer Sharku	Alleged failure to respect a binding court-decision.	Inadmissible
35.	2011-21	Ventor Maznikolli	Alleged undue delay by EULEX judges in scheduling a Supreme Court hearing.	Inadmissible
36.	2011-22	Hysni Gashi	Alleged denial of a fair trial and alleged incompetence of EULEX judges.	Inadmissible

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	Case	Complainant	Subject matter	Result
37.	2011-23	Hashim Rexhepi	Alleged violations of the right to liberty and the right to a fair trial.	Partly admissible – No violation
38.	2011-24	Predrag Lazic	Alleged failure to get a fair hearing in a reasonable time.	Inadmissible
39.	2011-25	Shaip Gashi	Alleged deprivation of German disability pension.	Inadmissible
40.	2011-26	Njazi Asllani	Alleged non-enforcement of a decision, failure to act by EULEX	Inadmissible
41.	2011-28	Case Y	Alleged breach of the right to respect private and family life.	Inadmissible
42.	2012-01	Qamil Hamiti	Alleged denial of the right to a fair hearing	Inadmissible
43.	2012-02	Arben Zeka	Alleged failure to adjudicate property case	Inadmissible
44.	2012-03	Rexhep Dobruna	Alleged denial of the right to a fair hearing.	Inadmissible
45.	2012-04	Izet Maxhera	Property related dispute with EULEX in Mitrovica.	Inadmissible
46.	2012-05	Fatmir Pajaziti	Alleged breach of right to liberty and right to a fair trial.	Inadmissible

ANNEX 5 The European Union Human Rights Review Panel: A Unique EULEX Accountability Mechanism

October 24th, 2012

by Mariya C. Nikolova

Introduction



It has been commonly noted that the United Nations and European Union mandated missions in Kosovo lack proper accountability mechanisms for human rights violations committed in the course of their mandate. One of the main criticisms has been that victims of such violations are effectively deprived of a forum before which they can bring their claims, which in itself undermines the goals and aspirations of the organizations and violates their right to have access to justice.

Based on extensive consultations, and taking into account the need for providing redress for possible violations, the European Union established the Human Rights Review Panel (HRRP) in 2009. The HRRP is a non-judicial accountability mechanism endowed with the power to review alleged human rights violations by European Union Rule of Law Mission in Kosovo (EULEX) in the conduct of its executive mandate. The HRRP can make non-binding recommendations on the basis of its findings, and follow up on the implementation of its recommendations with the Head of EULEX.

As such, the HRRP complements other already existing accountability mechanisms in EULEX and is inspired by other recently established accountability bodies – the Human Rights Advisory Panel of the United Nations Mission in Kosovo (UNMIK) and the Ombudsperson Institution in Kosovo.

Though having remained somewhat unnoticed, the HRRP promises to serve as an important pilot project for human rights accountability for future EU missions. As noted in its own Annual Report, the HRRP is currently “the only mechanism of its kind that deals with alleged human rights violations by a European Union Common Security and Defense Policy (CSDP) mission”.

While unable to award reparations, this mechanism represents a much needed forum to provide redress for violations which would otherwise remain unaddressed. It also represents a concrete reaffirmation of the premise that international organizations too have human rights responsibilities, and that victims have a right to access to justice for violations attributable to such organizations. In that regard, it is notable that the Commissioner for Human Rights of the Council of Europe proclaimed already in 2009 that:

“No one, especially an international organization, is above the law [...] when international organizations exercise executive and legislative control as a surrogate state they must be bound by the same checks and balances as we require from a democratic government.”

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Finally, the idea behind the HRRP is not only to reaffirm EULEX's own commitment to respect for human rights in Kosovo, but also to promote a culture of accountability among the Kosovo authorities. Whether or not it will be able to do so effectively will depend on the level of real independence it manages to achieve from the EULEX budget, the way in which it defines the scope of its mandate powers, and the extent to which EULEX follows up on its recommendations.

The next sections explore some of the unique features of the HRRP and provide some reflections on its nascent jurisprudence and the challenges ahead in the discharge of its mandate.

Mandate and rationale

The HRRP was born out of recognition that there was a lacuna in addressing human rights violations attributable to EULEX in the exercise of its mandate in Kosovo. It is therefore above all an accountability mechanism. However, it does not have the authority to issue binding decisions and does not award any compensation for damages.

The idea of having a mechanism in place with binding powers, or even extending the jurisdictional reach of the European Court of Human Rights to acts of the international administration in Kosovo was discussed, and set aside at the time, due to the legal complexities involved. The HRRP represented a short-term measure taken to improve the accountability of EULEX. It is therefore not unimaginable that further legal development can lead to a more constraining sort of accountability in the future.

Composition, Staff and Funding



Magda Mierzewska, Presiding Member of the Panel

The HRRP is composed of three international judges, one of whom is a EULEX judge. They are all appointed for a period of one year by the Head of Mission of EULEX, based on a competitive selection process and they are in no way subordinate to him. The judges are assisted by two legal officers and the staff of the EULEX Secretariat. The panel generally sits in Pristina and holds an average of six sessions per year. The deliberations are held in closed sessions and decisions are adopted by a majority. The official languages include Albanian, Serbian and English. Although the HRRP is entirely financed by EULEX, it is not a EULEX body and it sits in a separate building from the EULEX headquarters in Pristina. It is unclear from the Rules of Procedure whether the HRRP judges benefit from immunities similar to EULEX officials, and whether their premises and documents are inviolable.

Scope of mandate

The HRRP is able to review complaints by any person who claims to be the victim of a human rights violation by EULEX Kosovo (by virtue of an act or an omission) in the conduct of its executive mandate. Importantly, the HRRP does not serve as a reviewing instance (or appellate body) of any of the Kosovo courts.

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Substantively, the HRRP can consider violations under the following major international human rights instruments: The Universal Declaration of Human Rights (UDHR, 1948), The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950), The Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965), The International Covenant on Civil and Political Rights (ICCPR, 1966), The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), The Convention on the Rights of the Child (CRC, 1989). The only two major international instruments that the HRRP is currently not mandated to consider are The Convention on the Rights of Persons with Disabilities (CRPD, 2006) and its Optional Protocol (2006).

Interestingly, the above list of instruments is not found in the Rules of Procedure of the HRRP, but rather simply on its Webpage. By way of contrast, the Human Rights Advisory Panel of UNMIK lists the conventions it can consider in Article 1.2 of its Rules of Procedure. The broad jurisdictional mandate, reaching over both UN treaties and a regional convention, will require a wide scope of expertise from the sitting judges. The HRRP will be able to consider not only civil and political rights, but also social, economic and cultural rights. The HRRP can even directly apply the UDHR. In that aspect, it is only the second body of such nature that can do so, the first one being the UNMIK Human Rights Advisory Panel. The wide scope of international instruments to which the HRRP can make reference is truly exceptional for an accountability mechanism of this type and betrays an ambitious agenda.

Procedure

A complaint before the HRRP can be brought by the victim personally, or by a representative empowered to represent the victim. It has to be submitted in written form, and the alleged violations have to have occurred in Kosovo after 9 December 2008.

Once a complaint is deemed admissible, the Panel invites submissions from the Head of Mission of EULEX. It thereafter formulates its findings on the alleged human rights violation and publishes them in a reasoned decision, which includes non-binding recommendations to the EULEX Head of Mission. It is up to the Head of Mission to ultimately decide what remedial measures to take, and there is an expectation that he will reason his decision in so doing. The HRRP is additionally mandated to do follow-up findings on the implementation of its recommendations by the Head of Mission. It publishes promptly all of its decisions, including any follow-up decisions.

Case law

The Panel has thus far considered 46 cases, out of which it has found 14 admissible. In two situations, the HRRP has found that EULEX has violated certain provisions of the European Convention on Human Rights. In one of those two cases, the HRRP has already published its follow-up findings. The findings in the most recent cases concern the right to a fair trial, the right to an effective remedy, the right to life and the right not to be subjected to torture.

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As a general trend, the HRRP has thus far received complaints mostly about alleged violations under the ECHR (rather than any of the other available human rights instruments). One probable explanation is the better familiarity of the complainants with the ECHR provisions. It remains an open question whether the HRRP can consider proprio motu parallel violations under other relevant human rights instruments when they concern specifically protected rights or persons (e.g. the CRC or CERD). Among the violations most commonly alleged so far are: the violation of the right to life, the prohibition of torture, the right to liberty and security, the right to a fair trial, the right to respect for private and family life, the freedom of expression and the right to an effective remedy.

In its findings, the HRRP has extensively quoted ECHR jurisprudence and has attempted to interpret its mandate in light of the overall purposes of EULEX as set out in the European Council of Joint Action 2008/124/CFSP of 4 February 2008 establishing EULEX

Several important findings stand out in the nascent jurisprudence of the HRRP. First, with respect to the right to a fair trial, the HRRP has found that one of the important elements of the right of access to a tribunal guaranteed under Article 6 (1) of the ECHR is the actual execution of final, binding judicial decisions. Without proper execution of such decisions, the HRRP has held that the right to a fair trial remains illusory and inoperative. The HRRP's reasoning was based on the assertion that, as per ECHR's own jurisprudence, the execution of a judgment given by any court must be seen as an integral part of the "trial" for the purposes of Article 6 of the ECHR.

Secondly, the HRRP has provided important reflections on the exact scope of its mandate and powers. It has established, for instance, that while it can review the actions of EULEX or police while examining a case as they fall within the "executive mandate" of EULEX, it cannot review the administrative or judicial work of the Kosovo courts, even if there is a EULEX component in them (by virtue of a participating judge, for instance). The HRRP also considers that the EULEX's "executive mandate" does not cover questions of administrative character with respect to housing, the provision of healthcare, pollution or matters of social policy. One could wonder what social economic and cultural rights violations the Panel would consider itself competent to look into in the future under such a narrow interpretation of EULEX's executive mandate. On the other hand, the HRRP has recognized that the alleged inability of the complainants to find a proper judicial remedy for such violations raises serious questions "of law and fact" as to the right to access to justice. The Panel has therefore accepted that it is competent to review the complaint in that regard.

Thirdly, the HRRP has shown that it is ready to step in and identify the rights that appear to be violated even if they are not explicitly mentioned by the applicant, where on the totality of the evidence, a clear indication of potential violations arises. This was recently done in the case *W v. EULEX*, where the Panel ruled that the applicants' complaint essentially pertained to the right to life, the right not to be subjected to torture or other inhuman or degrading treatment or punishment, and the right to private and family life. Furthermore, in light of the important rights protected, the HRRP recommended in the same case that EULEX take certain interim measures pursuant to Rule 22 of the Rules of Procedure, in order to safeguard the complainants' security while the Panel deliberates on the merits of the case.

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The above overview of the case law demonstrates that the HRRP moves swiftly towards developing its own jurisprudence, basing itself largely on the object and purpose of EULEX's mandate, while being cautious not to engage in too much judicial creativity.

Implementation of recommendations

The remedial measures that the HRRP has recommended so far are concrete and actionable. Among others, the HRRP has suggested that the Head of Mission act to speed up proceedings affecting the right of a complainant, so as not to cause further violation of the right to a fair hearing under Article 6(1) of the ECHR, and that the Head of Mission look into ways of ensuring effective execution of judicial decisions.

The measures that the Head of Mission has reported being taken in response to the HRRP recommendations have been equally concrete, albeit in some cases unsatisfactory. Thus, for instance the Head of Mission has held that "he understands and sympathizes with a complainant's situation and that he is well aware of the large judicial backlog within the court system of Kosovo." Regrettably, in this instance the Panel considered that this was a reasonable answer, and noted that the EULEX Head of Mission had exercised his functions properly. The HRRP based itself on the finding that he had "taken certain measures to address the complainant's situation". Whether such a low threshold of due diligence will continue to satisfy the judges in the future is open to interpretation, but it is also likely to raise questions as to the effectiveness of the mechanism to provide a remedy. The success of the HRRP as an advisory body will be measured not only by the soundness of its decisions, but also by the extent to which its recommendations are implemented and make a material difference in the applicants' situation.

Outreach Strategy



HRRP Members meeting with students from Pristina University

The HRRP has put up an ambitious outreach strategy in place since 2010. This includes meetings with civil society organisations, relevant public authorities, and members of the general public. For 2011, the focus of the outreach strategy has been on municipal administrations. The Panel has also had received visibility via TV/radio and other media outlets. Since 2011, the HRRP has extended its outreach into Serbia. This seems to be a promising step into what is predictably a very delicate public relations exercise in a tense multi-ethnic environment. It will be interesting to see whether the HRRP will exchange experience and lessons learned with the UNMIK Human Rights Advisory Panel or the Ombudsman Institution in the future, and whether it will interact with the UN treaty bodies which are specifically mandated to interpret the conventions mentioned in its mandate.

Possible advantages of the HRRP

As is well known, EULEX enjoys jurisdictional immunity against local legal and administrative process. Therefore, the decision to create the HRRP is an expression of the realization that EULEX cannot be seen to avoid accountability because of its immunity. In that sense, its creation was already a step towards asserting the human rights responsibilities of international organizations. Moreover, the mechanism, as currently operational, strives to strengthen the overall objectives of the EULEX mission to promote the rule of law. Several aspects in the current functioning of the HRRP are indeed quite promising in that regard.

Firstly, almost by virtue of its existence, the HRRP is bringing a degree of transparency into the work of EULEX, which is unprecedented for other EU or UN missions around the world. It therefore represents not only an important forum for redress of violations, but also a mechanism for self-regulation and improvement within the EU presence itself.

Secondly, the Panel has already delivered on its promise to provide concrete reasoned findings, and perform expeditiously and impartially. The HRRP issued its first decision in April 2010, and although the composition of its judges changed quite a bit between 2010 and 2012, it did not slow-down in its considerations of complaints in 2011, even as they increased both in number and complexity.

Thirdly, through its outreach campaign, the HRRP is not simply providing information to civil society and public officials about its work and procedures. It also cultivates general awareness of fundamental human rights and mechanisms for redress, which serves the important educational objective of reaffirming the value of – and trust in – the rule of law. This can only further EULEX's own primary objective in Kosovo.

Some upcoming challenges for the HRRP

At this early stage of the HRRP's existence, it is perhaps premature to make any conclusions about the effectiveness of its work. As noted in the previous section, the HRRP has so far dealt with a handful of cases, demonstrating considerable impartiality and expediency. Nevertheless, there are several challenges lying ahead. The first one concerns funding, staffing, and resourcing. Currently, this mechanism derives its funding completely from the EULEX budget. Yet, both ECHR jurisprudence and practice show that real (and perceived) independence and impartiality can only come with an independently sourced budget. The question of whether EULEX will explore ways of achieving such independence remains an open one, but is just as important as the initiative to create such a mechanism in the first place.

Secondly, as the case law of the HRRP develops, there will arguably be more clarity as to the exact meaning and scope of the term "executive mandate" of EULEX, which are at the core of the HRRP admissibility provisions. The current record reveals a rather cautious approach, but it will be important for the HRRP not to be seen as a mechanism that simply shields or absolves EULEX of responsibility using a formalistic interpretation of the term "executive mandate".

Similarly, it remains to be seen how the HRRP will attempt to explain to victims that it has no powers to award financial compensations for damages suffered or binding decisions. It

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has done so very explicitly in its outreach campaign so far, but there will have to be a concerted effort on the part of the judges on the panel to demonstrate that the findings and recommendations they make serve just as an important reparative and remedial function as any material awards. One important feature of the HRRP which should not go unnoticed, for instance, is that there are no costs associated with filing a complaint before the HRRP, which is not the case with domestic judicial proceedings. Another possibility, in principle, remains the pursuit of compensation through the EULEX Third Party Liability Insurance Scheme for damages suffered, based on the findings of the HRRP.

In terms of the outreach strategy itself, the challenges ahead will continue to relate to informing the public authorities and civil society about the exact functions and powers of the panel and avoiding an upsurge of inadmissible complaints due to lack of awareness of its mandate.

Conclusion

Depending on any future decisions about HRRP's staffing, resourcing and funding, as well as the degree to which EULEX is seen to ensure that decisions issued by the HRRP are implemented and effective remedial measures are put in place, the panel can turn into a unique mechanism that ensures better performance by EULEX and contributes to lessons learned for future EU missions.

Although impact is too early to measure, its indicators will include the expediency and transparency of the findings, the level of involvement of civil society, the cooperation with the EULEX Head of Mission, and the implementation of recommendations. But by showing that it is willing to expose itself to a degree of human rights accountability, EULEX is already making a step in the right direction.

Finally, it should not be forgotten that there are many other, parallel ways to achieve accountability. Notably, legal accountability ought to be primarily ensured by the judicial mechanisms of the participating EU states. Thus, although the HRRP will remain a unique forum for victims, it will not be the "magical wand" which will solve all the problems arising out of human rights violations associated with EULEX's presence in Kosovo.

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