



Human Rights Review Panel

Newsletter No 15 - 1 November 2016 to 31 March 2017

- Recent sessions of the Human Rights Review Panel
- Meeting with the Head of Mission EULEX Kosovo
- Annual Report 2016
- Judicial appointments to Specialist Chambers by the Head of Mission EULEX Kosovo
- Case statistics
- Next session of the Human Rights Review Panel

Recent sessions of the Human Rights Review Panel

32nd Session of the Panel 9-11 January 2017

The Human Rights Review Panel, (Panel) held its 32nd session from 9 to 11 January, 2017. The Panel issued one (1) decision on merits, one (1) second decision on the implementation of its earlier recommendations by the Head of Mission, (HoM), two (2) decisions on the implementation of its recommendations by the HoM and two (2) decisions on admissibility.

In relation to these decisions, the following points should be noted. The Panel found in Case no. [2013-21 Thomas Rüsche against EULEX](#) that there had been a violation of Article 13, the right to an effective remedy, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, (Convention) on 11 January, 2017.

The Panel recommended that the HoM should acknowledge that the circumstances of the case amounted to a breach of the complainant's rights that were attributable to the acts and/or omissions of EULEX Kosovo in the performance of its executive mandate. It further recommended that copies of the Decision be distributed to the EULEX Prosecutors.

In a second follow up Decision, in Case No. [2011-20 X and 115 other complainants against EULEX](#), (Roma case), the Panel determined that the HoM had not complied with its recommendations in its Decision of 22 April 2015 and invited the HoM to update the Panel of further progress on the matter by 28 February, 2017.

The Panel held in its above Decision that there had been a violation of Article 13 of the Convention, the right to an effective remedy and accordingly made the following recommendations:

The HoM should instruct the competent EULEX prosecutorial officials to make enquiries with the Kosovo authorities as to whether an investigation in this matter was ongoing and, if so, at what stage of the process the matter now stood.

Having received that information, the HoM should instruct EULEX Prosecutors to consider whether to take over the responsibility of this case pursuant to Article 7(A) of Law No. 04/L-273 On Amending and Supplementing the Law Related to the Mandate of the European Union Rule of Law Mission in Kosovo, taking into account all relevant circumstances, as highlighted above, in particular the need for the Mission to guarantee the effective protection of the complainants' rights. The Panel requested the HoM to provide the Panel with the said information by 15 June 2015.

The Panel thereafter issued a Decision on the Implementation of the Panel's Recommendations on 11 November 2015 and issued its second such Decision on 10 January 2017. The HoM replied to the Panel on 16 March 2017 in relation to its Second Decision as follows:

The HoM advised the Panel that the Chief EULEX Prosecutor (CEP) had written to the Chief State Prosecutor (CSP) on 6 February 2017 to remind the CSP of the recommendations contained in the Decision of the Panel. The CEP advised the CSP that, in the circumstances of the case, the statute of limitations should not be invoked and that consideration should be given to the conduct of further investigations to establish if a criminal offence had been committed. The CEP suggested that such investigations might establish if there were any injured parties, and if so, obtain medical evidence from them. It was also suggested that an application for a waiver of immunity on the documents pertaining to the case might be submitted to UNMIK.

The HoM added that the CSP had informed the CEP on 28 February 2017 that a ruling to terminate the investigation was soon to be issued due to the expiry of the statutory limitation period which applied to the criminal offence of "causing general danger". The HoM also informed the Panel that she would review the said ruling upon its receipt and then determine what were further steps, if any, EULEX might be in a position to take under the circumstances.

The Panel held in Case nos. [2014-18 Fitim Maksutaj Against EULEX](#) and in Case No. [2014-37 Y.B. Against EULEX](#) that the HOM had implemented its recommendations in part only and decided to close the examination of those cases.

The Panel found in Case no. [2014-18 Fitim Maksutaj](#), on 12 November 2015, that there had been a violation of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and made the following recommendations:

The HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant's rights and should undertake all necessary measures to conduct an examination of what steps could be taken by the Office of the Chief EULEX Prosecutor (OCEP) to ensure that cases under the authority of that Office are dealt with in accordance with the provisions of Article 6(1) of the Convention. The HoM should also ensure that an effective review mechanism is put in place so that all such cases are dealt with within a reasonable time and the Panel draws attention to the fact that when the instant case was subject of a review by the OCEP, the case was brought to a speedy conclusion.

The Panel took note of the steps taken by the HOM to follow its recommendations, in particular, that the Mission was currently examining how best to put in place effective standards for the review of cases handled by EULEX prosecutors. However, the Panel further noted that the HOM did not

make a declaration, in any form, to acknowledge that the circumstances of the case amounted to a breach of the rights of complainant that were attributable to the acts of EULEX Kosovo.

In Case No. [2014-37 Y.B. Against EULEX](#) the Panel held that there had been a violation of Article 8 of the Convention and made the following recommendations to the HoM:

The HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant's rights attributable to the acts attributable to EULEX in the performance of its executive mandate. The HoM should provide copy of the present Decision to the EULEX Prosecutors to inform the EULEX Prosecutors of the general nature of an obligation to make it their priority to protect rights and freedoms of not only suspects and the accused but other persons involved in cases they investigate.

The Panel took note of the steps taken by the HoM to implement its recommendations in this case and observed, however, that the HoM did not make a declaration, in any form, to acknowledge that there had been breach of human rights that were attributable to the acts of EULEX Kosovo.

The Panel held that Case no. [2014-10 Nikollë Sokoli Against EULEX](#) and Case no. [2015-04 Nazmi Maloku Against EULEX](#) were inadmissible.

33rd Session of the Panel 6-8 March 2017

The Panel issued one (1) second follow-up decision on the implementation of its earlier recommendations by the Head of Mission, (HoM), two (2) first follow-up decisions on the implementation of its recommendations by the HoM and nine (9) decisions on inadmissibility.

The Panel held that there had been violations of Articles 2 and 3, and of Article 13 in conjunction with Article 2 of the Convention in its Decision of 19 October 2016 in Cases No. [2014-11 to 2014-17, D.W.; E.V.; F.U.; G.T.; Zlata Veselinovic; H.S. and I.R. Against EULEX](#) and made the following recommendations:

The HoM should make a declaration to acknowledge that the circumstances of the case amounted to a breach of the complainant's rights; communicate and transmit the Decision to all relevant investigative and prosecutorial authorities in EULEX; the Mission to communicate with relatives of the victims in an expeditious and diligent manner and also to adopt guidelines for such communications. The HoM should also emphasise the importance of cases of enforced disappearance continuing to be an investigative priority and she should ensure that the EULEX investigative authorities are provided with the necessary resources to achieve their mission in the protection of the human rights, in particular, those rights guaranteed by Articles 2 and 3 of the Convention.

The HoM was further invited to advise the competent EULEX investigative and prosecutorial authorities the factors listed in the Decision as being relevant in the evaluation of the "exceptional" competence of EULEX prosecutors under Article 7(A) of the revised Law on Jurisdiction.

The HoM informed the Panel on 29 November, 2016 that she would communicate the decision to the relevant investigate and prosecutorial organs of the Mission, in particular, to EULEX Prosecutors, who are ultimately responsible for the assessment of whether or not there were extraordinary circumstances that would justify taking over responsibility for a particular case.

The HoM also informed the Panel that she had approved the appointment of a Human Rights Focal Point Network to serve as a mechanism to mainstream human rights in the implementation of the

mandate of the Mission as well as to conduct a review of the related procedures and guidelines. She further stated that she would forward, through the Civilian Operations Commander, the decision of the Panel to the Member States, who were ultimately responsible for the allocation of resources to the Mission.

The Panel declared on 7 March 2017 that the HoM had implemented its recommendations in part only and it welcomed the HoM's undertaking to provide the Panel with the results of the internal review of the related procedures and guidelines in due course.

Case No. [2014-32 L.O Against EULEX](#)

The Panel found that EULEX Kosovo violated Articles 2 and 3 (procedural limb) and Articles 8 and 13 of the Convention in its Decision of 11 November 2015 and made the following recommendations:

The HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant's rights; instruct all organs of the Mission to communicate with alleged victims and their close relatives in a diligent, expeditious and careful manner; consider the adoption of guidelines laying down in more detail what this general instruction might imply in concrete circumstances; ensure that all investigative bodies within EULEX, (the Special Investigation Task Force (SITF) and the EULEX Prosecutors) have at their disposal the resources and support which are required to accomplish their mission.

The HoM should seek to clarify the relationship between the Mission and the SITF to ensure the effective protection of rights and guarantees; provide adequate and sufficient information to complainants; impress upon the SITF and the EU Member States the importance of such cases being fully and effectively investigated and impress upon the SITF the importance and necessity to inform victims of the general aspects of their investigation.

The outgoing HoM replied to the Panel by letter on 29 April, 2016 in relation to the recommendations in Decision of 11 November 2015 as follows:

Since the Panel's recommendations concern measures that are at the disposal of the Civilian Planning and Conduct Capability, (CPCC), several EU institutions as well as Member States, I have informed the CPCC and the Contributing States of the Panel's Decision through the Civilian Operations Commander and I thus consider that the recommendations have been implemented.

The Panel issued a **Decision on the Implementation of its Recommendations on 19 October 2016** and observed that, contrary to what the above statement of the HoM appears to suggest, the responsibility to enforce and implement the recommendations of the Panel falls entirely and exclusively to the HoM, not the CPCC nor to Member States. In that sense, whilst the HoM might decide, in a particular case, to seek the assistance of other bodies within EULEX to implement the recommendations, the responsibility for their implementation ultimately remains with the HoM. Accordingly, the Panel declared that the former HoM had not implemented the recommendations and invited the new HoM to fully consider and implement each and every recommendation of the Panel and to inform the Panel of the actions taken in response as soon as is practical.

The new HoM responded on 8 December 2016 to the Panel's Decision on the Implementation of its Recommendations of 19 October 2016. She stated that, in relation to the first recommendation of the Panel, it was not the Mission's policy to expressly acknowledge to complainants that EULEX had violated his/her human rights. With regard to the second recommendation, she advised that she had approved the establishment of a Human Rights Focal Point Network to ensure human rights compli-

ance by the EULEX Divisions. In relation to the other recommendations, she referred to the Panel to the response of the outgoing HoM of 29 April, 2016 and she saw no reason to depart from the view expressed therein.

The Panel issued its Second Decision on the Implementation of the Panel's Recommendations on 7 March 2017. The Panel noted with regret that it has been the consistent practice of the Mission to refuse or fail to formally acknowledge responsibility for a violation of the complainant's human rights where the Panel has determined that this had occurred.

With regard to its second recommendation on communications with the complainant, the Panel noted with satisfaction the initiative of the HoM to create a Human Rights Focal Point Network to ensure human rights compliance by the EULEX Divisions.

With regard to the remainder of the Panel's recommendations, the HoM stated as follows:

"...I refer you to the response from my predecessor of 29 April 2016, and see no reason to depart from the view expressed therein. This is supported by the Council Joint Action 2008/124/CFSP as amended by the Council Decision 2014/685/CFSP of 19 September 2014 and Council Decision 2016/947/CFSP of 14 June 2016, which stipulate that EULEX shall support relocated judicial proceedings within the member states. However, the Member States approved the establishment of a Specialist Chambers and Specialist Prosecutors Office, (SC&SPO) that is fully independent from EULEX. Law No. 05/L-053 adopted by the Kosovo Assembly on the 3 August 2015, stipulates that SPO will take over the mandate and personnel of the SITF, and "shall be an independent office for the investigation and prosecution of crimes within the jurisdiction of the Specialist Chambers". In addition, Member States decided that the SC&SPO shall be accountable to a separate Ombudsperson, and specifically exclude both the SC& SPO from the jurisdiction of the Panel. No pressure can therefore be exercised on SPO&SC by EULEX as suggested by the recommendation. I am therefore not able to implement the Panel's recommendations."

The Panel takes notice of the HoM's view that she is not competent and has no authority to raise and address the Panel's recommendations with SITF, SC&SPO or the States supporting the new institution. Based on the above considerations, the Panel is satisfied that the HoM has given due and proper consideration to its recommendations and has provided an adequate response to the majority of those recommendations.

The Panel declared that the former HoM implemented its recommendations in this case in part only, welcomed the HoM's undertaking to advise the Panel of the outcome of the internal review and decided to close the examination of this case.

2014-34 Rejhane Sadiku Sylja Against EULEX

The Panel found in this case on 19 October, 2-16 that EULEX Kosovo violated Articles 2 and 3, and of Article 13 in conjunction with Article 2 of the Convention; and made the following recommendations:

The HoM should make a declaration to acknowledge that the circumstances of the case amounted to a breach of the complainant's rights; communicate and transmit the present decision to all relevant investigative and prosecutorial organs of the Mission; the Mission to communicate with relatives of the victims in an expeditious and diligent manner and to adopt guidelines for such communications. The HoM should also emphasise the importance of cases of enforced disappearance continuing to

be an investigative priority and should ensure that the EULEX investigative authorities have the necessary resources to achieve their mission.

The HoM was further invited to draw to the attention of the EULEX competent investigative and prosecutorial authorities, the factors listed in the present decision as being relevant to the evaluation of the “exceptional” competence of EULEX prosecutors under Article 7(A) of the revised Law on Jurisdiction and to impress upon them the importance of taking these factors into consideration in their assessment of whether or not they should seek to take over responsibility for this case. The HoM was invited to inform the Panel of the measures she has undertaken in connection with the present decision by 19 November 2016.

The HoM In her letter of 28 November 2016 stated as follows;

“[A] copy of the Panel’s decision has been provided to the EULEX Prosecutors. In addition, I have approved the establishment of a Human Rights Focal Point Network to ensure human rights compliance by the Divisions. An internal review of the procedures and guidelines currently in place will be part of this process and I will inform the Panel of the results of the internal review.

Some of the Panel’s recommendations concern measures that are under the competence of the Civilian Planning and Conduct Capability (CPCC), several EU institutions as well as Member States. I have informed the CPCC and Contributing States of the Panel’s decision and findings through the Civilian Operation Commander. Further, I would like to emphasise that EULEX prosecutors are well cognitive of the rules and regulations applicable with regard to ‘extraordinary circumstances’ stipulated by Article 7 (A) of the amended Law on Jurisdiction.”

The Panel issued its Decision on the Implementation of its Recommendations on 7 March 2017. In relation to its first recommendation that the circumstances of the case amounted to a breach of the complainant’s rights, the Panel noted with regret that it has been the consistent practice of the Mission to refuse or fail to formally acknowledge responsibility for a violation of the complainant’s human rights where the Panel has determined that this had occurred.

The Panel was satisfied that the HoM has taken effective steps to implement its recommendation that its decision and findings be circulated to all relevant organs. The Panel also commended the HoM on her decision to establish a Human Rights Focal Point Network to ensure human rights compliance by the EULEX Divisions. The Panel had also recommended that the HoM should impress upon the EULEX investigative bodies the importance of cases of disappearances continue to be investigative priorities. Whilst the HoM did not expressly address this recommendation, the Panel’s decision was duly communicated to the EULEX prosecutors so that the Panel is satisfied that its concern was duly conveyed to the competent organs of the Mission.

The Panel therefore declared that the HoM had implemented its recommendations in this case in part only and welcomed the HoM’s undertaking to advise the Panel of the result of the internal review currently being undertaken and decided to close the examination of this case.

The Panel held that the complaints were inadmissible in the following Cases: [2014-35](#); [2015-06](#); [2015-11](#); [2015-12](#); [2015-15](#); [2016-01](#); [2016-02](#); [2016-04](#); and [2015-05](#).

Meeting with Head of Mission EULEX Kosovo

The Panel met with Ms Alexandra Papadopoulou, Head of Mission, accompanied by Ms Elaine A Paplos, Ms Marianne Fennema and Ms Valentina Vitali in the HRRP Building on 7 March 2017. The agenda included discussions on the current workload of the Panel and its impact on the reduced human resources of the Secretariat in the wake of the staff reconfiguration of EULEX in 2016. Discussions also covered issues related to murdered and mission persons, i.e. enforced disappearances during the armed conflict after June 1999. The terms of reference of the proposed EULEX Human Rights Focal Point Network were also discussed.



From left to right: (out of shot-Noora Aarnio), Guenael Mettraux, Elka Ermenkova, Madga Mierzewska, Anna Bednarek, John J Ryan, Marianne Fennema, Alexandra Papadopoulou, Valentina Vitali, Elaine A Paplos

Annual Report 2016

The Human Rights Review Panel published and distributed its Annual Report 2016 on Friday, 24 March, 2017. The Report provides information on the cases that the Panel reviewed throughout the reporting period, the subject matter of complaints and information on recent developments in the Panel's case law. It also provides information on other activities of the Panel such as the internal and external meetings in which it engaged as well as information on its public outreach campaign. The Annual Report concludes with a segment on its conclusions and recommendations at the end of the Report.

The Report may be viewed on the Panel's website at: www.hrrp.eu and has been distributed electronically to numerous recipients.

Judicial appointments to Specialist Chambers and Specialist Prosecutors Office

Ms Alexandra Papadopoulou, Head of Mission, EULEX Kosovo appointed two Members of the EULEX Human Rights Review Panel as well as a former Member of the UNMIK Human Rights Advisory Panel as Judges with the Specialist Chambers, The Hague, Netherlands on 7 February, 2017, (see below).

The Law on the Specialist Chambers and Specialist Prosecutor's Office, Law No. 05 L/-053 was promulgated by Decree No. DL-027-2015 on 3 August 2015. The Specialist Chambers and Specialist Prosecutor's Office have jurisdiction over crimes against humanity, war crimes and other crimes under Kosovo law in relation to the allegations reported in the Council of Europe Parliamentary Assembly Report of 7 January 2011 primarily with regard to the war crimes committed by the ex paramilitary Kosovo Albanian UCK, Kosovo Liberation Army.

Dr Guenael Mettraux

Dr Guenael Mettraux was appointed as a Judge with the Specialist Chambers on 7 February, 2017. He has served as a member of the Human Rights Review Panel since 30 September, 2012. Dr Mettraux is a Swiss citizen and he holds a licence en droit from the University of Lausanne (Switzerland), an LLM from University College London and a PhD in law from the London School of Economics and Political Science.

He has practiced law as a Defence counsel and consultant before international criminal jurisdictions (ICTY, ICC, STL and ECCC) over the last fifteen years. In that time, 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. He is currently Professor at the University of Amsterdam (The Netherlands) and guest lecturer at the University of Fribourg (Switzerland).

Dr Mettraux 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*.

Judge Antonio Balsamo

Judge Antonio Balsamo, Italy was also appointed as an International Judge with the Specialist Chambers, The Hague, Netherlands, on 7 February, 2017. He served as Presiding Member of the Human Rights Review Panel of EULEX in Kosovo from May 2010 until May 2012.

He has served as Deputy Prosecutor General of the Italian Supreme Court of Cassation since 2016, and as Professor of Criminal law at the Faculty of Law of the LUMSA in Palermo. He previously served as the President of the Court of Assize of Caltanissetta from 2011 to 2016. Prior to this, Judge Balsamo was Judge seconded to the Italian Supreme Court of Cassation from 2007 to 2011 and Judge of the Court of Palermo from 1992 to 2007. He also served as *Presiding Member of the Human Rights Review Panel of EULEX, Kosovo* from May 2010 to May 2012.

Judge Balsamo participated as an expert and consultant in EU projects concerning the reform of the Criminal Code of Bulgaria, the establishment of a Public Prosecutors Office to deal with organized crime and corruption in the Former Yugoslav Republic of Macedonia and human trafficking in Turkey. He was a member of several Italian judicial committees and boards.

Judge Balsamo holds a law degree from the University of Palermo (Italy), and received his specialization Diploma in Regional and Local Government Law from the University of Palermo. He was appointed as a trainee Judge in 1991. He has published extensively on various topics related to the protection of human rights at both national and international level and to criminal law.

Judge Michele Picard

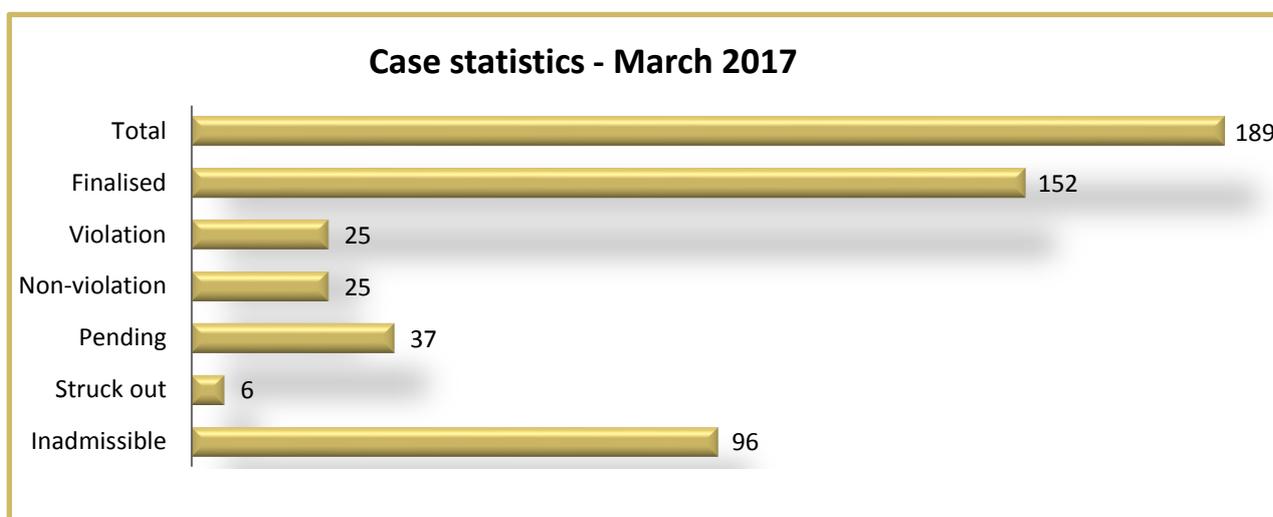
Judge Michele Picard (France) was also appointed as an International Judge with the Specialist Chambers, The Hague, Netherlands, on 7 February, 2017. She served as a member of the UNMIK Human Rights Advisory Panel from January 2007 until March 2008.

Judge Picard has served as Judge at the Appeals Court of Paris since June 2013. She previously served as Judge at the International Criminal Tribunal for the former Yugoslavia from 2008 through 2013. Prior to that, between 2007 and 2008, she served as a *Member of the UNMIK Human Rights Advisory Panel in Kosovo*, and from 1996 to 2003 she presided over the Human Rights Chamber for Bosnia and Herzegovina. In 2005, she was appointed as independent expert on the Human Rights Situation in Uzbekistan. She also worked for the Council of Europe as an expert on compatibility exercises in Macedonia, Albania and Bosnia and Herzegovina.

Judge Picard holds a law degree from the University of Paris II. She graduated from the National School for Magistrates in Bordeaux in 1992.

Case statistics

The Panel has reviewed one hundred and fifty two (152) cases since it commenced its operation in June 2010. It held that EULEX Kosovo has committed rights violations in twenty five (25) cases. It has additionally found that there were no human rights violations in twenty five (25) other cases which it had deemed admissible. Some thirty seven case have been filed with the Panel since 1 January 2016 and there currently thirty seven (37) cases pending before the Panel.



Next session of the Panel

The next session of the Panel is scheduled to take place from 29 May to 31 May 2017.

Visit Panel website: www.hrrp.eu



HOW TO FILE A COMPLAINT WITH HRRP

(Rules 25 and 26 of the Rules of Procedure of the HRRP)

Who?

Any person who does not work for EULEX Kosovo and who claims to be a victim of a human rights violation by EULEX Kosovo in the performance of its executive mandate.

The complainant (the person making the complaint) can be represented by a lawyer or another representative of his or her choice. In that case a letter of authority must be filled in.

What?

The Panel will only examine complaints concerning alleged human rights violations that happened after 9 December 2008 in Kosovo. The violation must be caused by EULEX Kosovo in the performance of its executive mandate.

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

When?

The complaint must be submitted to the Panel within six months from the date of the alleged violation.

How?

The complaint must be submitted in writing. No complaints may be made by phone. The complainant can use either the English, Albanian or Serbian language.

The complaint should normally be made on the complaint form and be accompanied by relevant documents and decisions (if any), as instructed in the form.

If a complaint is introduced in a letter, such letter must set out, at least in summary form, the subject matter of the complaint in order for the matter to be examined further.

Where?

The complaint may be filed at:

Human Rights Review Panel - Secretariat

Rrustem Statovci Street no. 29 – 10000 Pristina – Kosovo

Tel: +381 (0) 38 78 2125

A complaint can also be sent by email to office@hrrp.eu

www.hrrp.eu

Completion of the Complaint Form

The complaint should be written legibly and, preferably, typed.

The form should contain all contact details of the complainant.

If the complainant provides documentary evidence, legible copies should be submitted. **Do not send original documents.**

The documents should be listed in date-order, numbered consecutively and with a short description (e.g. letter, order, judgment, appeal, etc.).

The complaint will be assigned a file number upon registration. The file number must be referenced in all subsequent correspondence. If the complainant has an earlier complaint pending before the Panel, he or she must inform the Panel of the file number. If the complainant for some reason does not wish his or her identity to be disclosed, he or she should fill in the appropriate section of the complaint form.