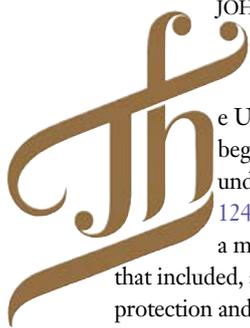




Holding to account

Unique non-state human rights accountability mechanisms were established in Kosovo in order to provide remedies for alleged human rights violations by the UN and the EU. **John J Ryan** explains

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The United Nations' Mission in Kosovo (UNMIK) began its international civil presence in Kosovo under [Security Council Resolution 1244](#) of 10 June 1999. UNMIK was established with a mandate to provide an interim civil administration that included, among other things, responsibility for the protection and promotion of human rights. Accordingly, the extension of accountability for human rights violations from states to international organisations was initiated by UNMIK through the medium of the Human Rights Advisory Panel on 26 March 2006.

The need for a non-state independent human rights accountability mechanism arose because the former Republic of Yugoslavia, the host country of UNMIK, was not a high contracting party to the *European Convention on Human Rights* (ECHR) and, therefore, could not be held accountable for alleged human rights violations by UNMIK in its exercise of executive powers. Neither was UNMIK a high

contracting party to the ECHR and, accordingly, the people of Kosovo had no recourse to the European Court of Human Rights for alleged human rights violations by UNMIK.

Non-state accountability

The UN Human Rights Advisory Panel (HRAP) was eventually instituted on 12 November 2007.

UNMIK had experienced increasing criticism over time by Human Rights Watch, Amnesty International, the Norwegian Helsinki Committee, and other concerned parties because of its failure to resolve a human rights accountability void in the exercise of its executive powers when it became operational in Kosovo in 1999.

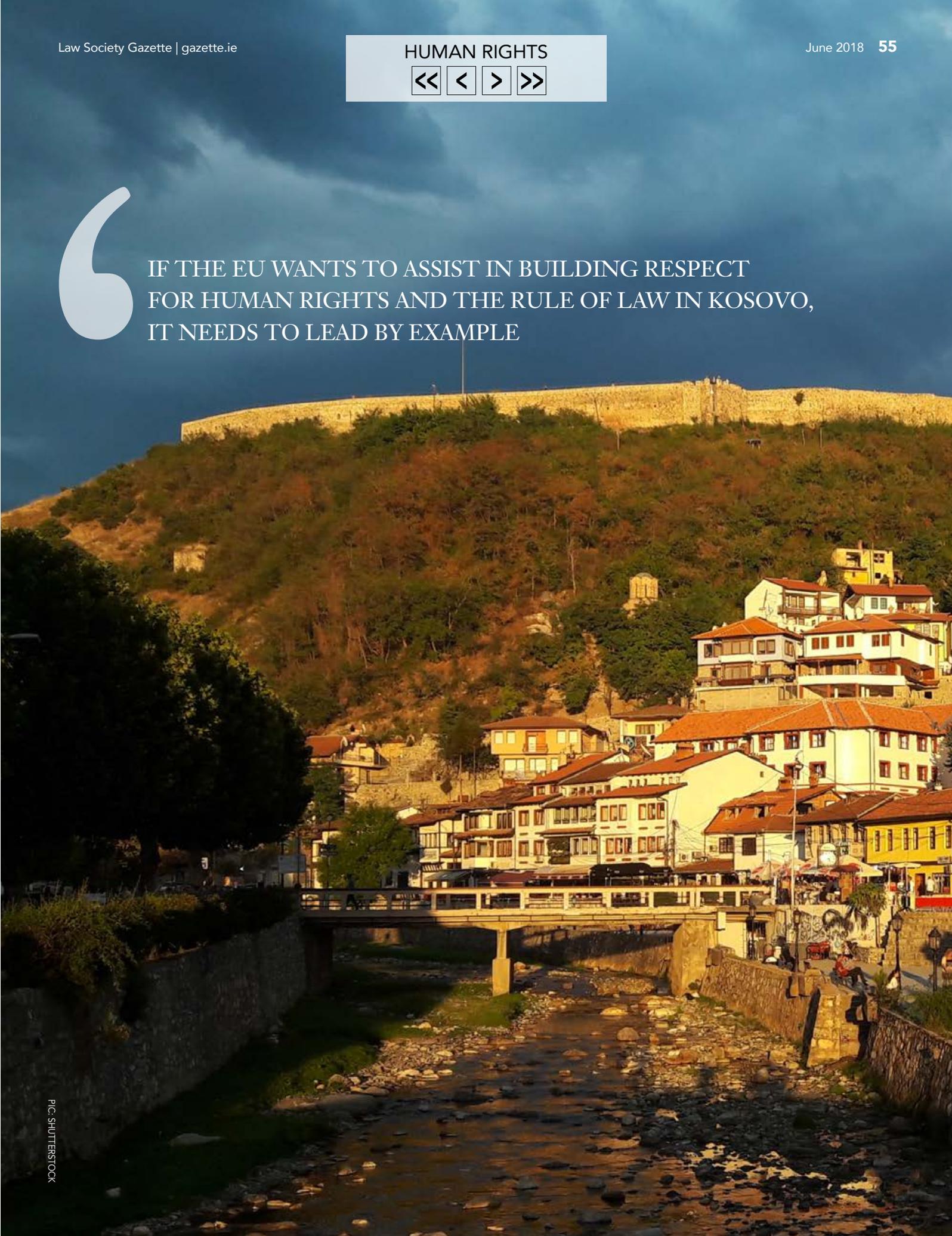
Those international human rights monitoring organisations recommended in a joint press release on 10 March 2008 that the proposed EU mission in Kosovo ought to subject itself to much greater human rights scrutiny and accountability than its predecessor, UNMIK: "If the EU wants to assist in building respect for human rights and the rule of law in Kosovo, it needs to

AT A GLANCE

- UNMIK was established to provide an interim civil administration that included responsibility for the protection and promotion of human rights
- The EU established EULEX in February 2008. Its mandate was to achieve sustainable and accountable institutions, judicial authorities, and law enforcement agencies in Kosovo
- EULEX duly took over its executive responsibilities from UNMIK in the justice, police, and customs components in December 2009



IF THE EU WANTS TO ASSIST IN BUILDING RESPECT FOR HUMAN RIGHTS AND THE RULE OF LAW IN KOSOVO, IT NEEDS TO LEAD BY EXAMPLE





The annual Vidovdan celebrations

lead by example. That means that its mission accepts serious independent scrutiny of its human rights record from day one.”

The mandate of the HRAP was to examine complaints by individuals or groups of individuals who claimed to be victims of human rights violations by UNMIK in the exercise of its executive mandate.

The HRAP duly received some 527 complaints over time and found that UNMIK had violated human rights in 335 cases. The HRAP found, among other things, that UNMIK had committed 231 human rights violations in murdered and missing person cases (MMP) under article 2 (right to life) and 163 violations of article 3 (prohibition of torture), in conjunction with article 2 of the ECHR respectively, from a total of 248 admissible MMP cases. UNMIK completed its executive mandate in Kosovo on 9 December 2009. The HRAP continued thereafter with the review of its complaints and issued its [final report](#) on 30 June 2016.

The EU established the [EULEX Kosovo](#)

Rule of Law Mission – its largest ever common security and defence policy mission – on 4 February 2008. Its mandate was to achieve sustainable and accountable institutions, judicial authorities, and law enforcement agencies in Kosovo. EULEX duly took over its executive responsibilities from UNMIK in the justice, police, and customs components on 9 December 2009.

The EU had earlier established the Human Rights Review Panel (HRRP) on 29 October 2009, and it became operational on 10 June 2010. The mandate of the HRRP was to review complaints from any person, other than EULEX Kosovo personnel, who claimed to be a victim of a human rights violation by EULEX Kosovo personnel in the conduct of its executive mandate in the justice, police, and customs components.

Complaints

The HRRP received 195 complaints to date, of which 108 were inadmissible. The HRRP found that EULEX committed

violations in 26 cases, and it found that no violations had occurred in 25 other admissible complaints that it reviewed. While some alleged violations resulted from EULEX action, other complaints came about from a supposed failure to act. These concerned alleged refusals by EULEX prosecutors to initiate investigations and/or their failure to file indictments. Additionally, there were allegations that EULEX police did not adopt adequate measures in some instances to protect complainants from harm by third parties.

The most common human rights violations examined by the HRRP under the ECHR were article 2 (right to life), article 3 (prohibition of torture), article 5 (right to liberty and security), article 6 (right to a fair trial), article 8 (right to respect for private and family life), article 9 (right to freedom of thought, conscience and religion), article 11 (freedom of assembly and association), article 13 (right to an effective remedy), and article 1 of protocol 1 (protection of property).

Violations by EULEX

The following is a representative sample of the more serious complaints reviewed by the HRRP:

- *A, B, C, D, H and G against EULEX*. The complainants submitted, among other things, that unknown persons attacked them with Molotov cocktails as they returned home from the annual Vidovdan celebrations in Gazimestan, Pristina Region, on 28 June 2012. The HRRP held that poor planning and inadequate operational control, as well as the limited deployment of EULEX police, contributed to the complainants being denied their right to private life, their freedom of assembly, as well as their right to exercise their religion. The HRRP consequently decided that EULEX committed human rights violations, among other things, under articles 8, 9, 11 and 13 of the ECHR.

SUCH HUMAN RIGHTS ACCOUNTABILITY MECHANISMS MAY WELL CONSTITUTE AN ESSENTIAL COMPONENT OF INTERNATIONAL ORGANISATIONS AND, IN PARTICULAR, IN RULE OF LAW MISSIONS

HUMAN RIGHTS



- *X and 115 others against EULEX*. The complainants were part of a larger group of approximately 600 Kosovo Roma, Ashkali, and Egyptians whose homes were destroyed during the armed conflict in Kosovo in 1999. They were then accommodated in the former Trepce mining complex in northern Mitrovica, where they were allegedly exposed to lead poisoning. The HRRP held that there has been a violation of article 13 of the convention.
- *DW, EV, FU, GT, Zlata Veselinovic, HS, and IR; LO against EULEX and Rejhane Sadiku-Syla against EULEX*. These cases almost exclusively concerned Kosovo Serb persons who were murdered and/or went missing, allegedly at the hands of the Kosovo Liberation Army, in the latter half of 1999 and throughout 2000. The complainants alleged that EULEX criminal investigations were inadequate and that EULEX failed to prosecute the perpetrators. The HRRP found that EULEX had violated articles 2, 3 and 13, in conjunction with article 2.
- *F and others against EULEX*. The complainant alleged that the inhuman and degrading treatment of her husband by EULEX led to his suicide. The HRRP held that EULEX violated article 2 in its procedural limb, as well as article 3.

Implementation

The EULEX Head of Mission (HoM) implemented in full the recommendations of the HRRP in *A, B, C, D, H and G against EULEX* with regard to inadequate planning and organisational shortcomings, lax communications, no risk assessment, insufficient police resources, and no clear instructions and guidelines, in particular at to when EULEX police might intervene to prevent human rights violations.

The HRRP declared that the HoM implemented the recommendations of the HRRP in part only in the following cases: *X and 115 others*; 2014-11 to 2014-17; and 2014-34.

The HoM did not implement the recommendations of the HRRP in case 2014-32.

Jurisprudence

The jurisprudence of the HRRP emanated primarily from rulings on preliminary procedural matters, such as jurisdiction in

general, temporal jurisdiction, admissibility, complaints manifestly ill-founded, and the exhaustion of remedies. The HRRP also ruled on a number of substantive issues such as the right to life, the right to a fair trial, and the right to protection of property.

The HRRP has also dealt with specific issues such as the definition of the scope of the acts or omissions attributable to EULEX and the identification of continuing and non-continuing violations arising from factual matters that occurred since 1999, where these facts gave rise to a continuing violation from a temporal perspective. The HRRP additionally addressed issues of ‘legitimate aim’, ‘necessity’ and the ‘proportionality’ of the interference with the right of respect for private and family life.

International recognition of the developing jurisprudence of the HRRP can be shown by the publication of the HRRP decisions in *DV, EV, GT, Veselinovic, HS and IR*, as well as *Rejhane Sadiku-Syla*, in the [information note](#) of the European Court of Human Rights on the case law of the court in August/September 2017.

Accountability

The HRRP decisions and their implementation by the HoM have helped to clarify – in a practical way and in the operational sense – the accountability of EULEX for its human rights violations. The HRRP decisions in cases 2012-09, 2012-10, 2012-11, 2012-12, 2012-19 and 2012-20 have also been of assistance to EULEX civilian police, as evidenced by the vast operational improvements for the Vidovdan celebrations on 28 June 2013 and in subsequent years, which were practically incident free.

Through its operations, the HRRP has enhanced the credibility and status of EULEX from a human rights accountability perspective, with EULEX being subjected to independent external oversight in the discharge of its executive mandate.

The HRRP has also identified a number of factors that limit its effectiveness. These include non-binding decisions, no jurisdictional competence over judicial proceedings, inability to recommend monetary compensation, and limited jurisdiction in relation to *ratione temporis* (temporal jurisdiction) and *proprio motu* (of its own volition).

The HRRP is well established within the EU common security and defence policy

infrastructure as an effective accountability mechanism for the protection of human rights standards in international organisations in the executive role.

Both the HRAP and the HRRP have made major contributions to the development of international human rights law for international organisations in the exercise of executive authority. Such human rights accountability mechanisms may well constitute an essential component of international organisations and, in particular, in rule-of-law missions when these international organisations may again exercise state-type executive powers. [G](#)

LOOK IT UP

CASES:

- *A, B, C, D, H and G against EULEX* (case nos 2012-09, 2012-10, 2012-11, 2012-12, 2012-19 and 2012-20)
- *DW, EV, FU, GT, Zlata Veselinovic, HS, and IR* (case nos 2014-11 to 2014-17)
- *F and others against EULEX* (case no 2011-27)
- *LO against EULEX* (case no 2014-32)
- *Rejhane Sadiku-Syla against EULEX* (case no 2014-34)
- *X and 115 others against EULEX* (case no 2011-20)

RESOLUTIONS AND REGULATIONS:

- *Rules of Procedure*, rule 25.2, EU Human Rights Review Panel, European Rule of Law Mission, Kosovo
- *UNMIK Regulation no 2006/12* on the establishment of the Human Rights Advisory Panel (23 March 2006)
- *UN Security Council Resolution 1244* (10 June 1999)

LITERATURE:

- *Final Report of the UNMIK Human Rights Advisory Panel* (30 June 2016)
- *Information Note of the European Court of Human Rights* (August/September 2017)