

**HUMAN RIGHTS REVIEW PANEL**

**CASE-LAW NOTE ON**

**THE PROTECTION OF SUBSTANTIVE HUMAN RIGHTS**

**BY THE HUMAN RIGHTS REVIEW PANEL**

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# Mandate of the Panel and Protected Fundamental Rights – General considerations

The Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO is the source of authority and power of the EULEX Mission in Kosovo (hereinafter, “the Mission”). It lays down the mandate of EULEX and, *inter alia*, specifies its responsibility to act in compliance with relevant human rights standards in Article 3 (i), requiring it to ensure that “all its activities respect international standards concerning human rights and gender mainstreaming”.

On 29 October 2009, the Accountability Concept EULEX Kosovo – Human Rights Review Panel was adopted. This resulted in the establishment of the Human Rights Review Panel as a human rights accountability mechanism build into but also independent of the Mission. This was considered to be a fundamental requirement for EULEX Kosovo as a Rule of Law Mission vested with certain limited executive functions. Such an external accountability mechanism was intended 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 his or her human rights by EULEX Kosovo in the conduct of the executive mandate of EULEX Kosovo.

In sum, the Panel was created as a way to ensure that EULEX Kosovo would operate within the framework of its executive mandate in a manner consistent with general standards of human rights recognised under international law. These standards reflect minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.[[1]](#footnote-1) They normally to and are relevant to states and their organs, rather than non-sovereign legal entities such as a rule of law mission.

As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms, (the Convention) and the International Covenant on Civil and Political Rights, which set out minimum standards for the protection of the human rights to be guaranteed by public authorities in all democratic legal systems.[[2]](#footnote-2) These rights form a core set of fundamental rights recognised by general international law. These are relevant to the work of the Panel and set out the minimum standards of human right protection relevant to the fulfilment of its mandate.

The obligation of the Mission to comply with international human rights standards and, therefore, the competence of the Panel to review the conduct of the Mission in relation to those, is not restricted in principle to any particular set of human rights. Instead, each and all of the rights guaranteed under any of the applicable instruments (see below) could potentially be a matter of concern to the Panel.

However, these rights are of concern to the Panel only if and when they are said to have been violated by the Mission in the conduct of its executive mandate in the justice, police and customs sectors. Outside that framework, the Panel has no competence to evaluate the Mission’s compliance with internationally recognised standards of human rights.

# Applicable Legal Norms and Relevant Standards

## 2.1 Applicable norms

In accordance with the provisions of the Accountability Concept, the Panel may consider complaints pertaining to alleged breaches of, among others, the following human rights instruments:

* The Universal Declaration on Human Rights (1948)
* The European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention, 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).

## 2.2 The Panel’s heavy focus on the ECHR

In its decisions, the Panel has relied heavily on the European Convention of Human Rights and the caselaw of the European Court of Human Rights. Much less so on other human rights instruments. There are a number of reasons for the *ECHR-centrism* of the Panel. First, as a European nation, Kosovo is aspiring to abide by relevant human rights standards applicable on that continent. The same is true of the Mission. As an EU mission, it seems natural that it would strive to apply standards applicable in that particular area. Secondly, the ECHR reflects a core of basic, internationally-recognised, human rights that should be applicable in any law-abiding context. By committing to those, the Mission is also sending an implicit message that, in the performance of its executive tasks, it will strive to comply with the same, minimum, standards of human rights that are normally applicable to states on the continent. Thirdly, there is something to be said for the quality and amount of jurisprudence coming out of the ECtHR, which the Panel was able to rely upon to fulfil its own mandate. The breadth and depth of the caselaw of the ECtHR offered the Panel a rich jurisprudential pot from which to borrow for the resolution of its own cases.

## 2.3 Application of ECHR standards with a twist? Specificity of a rule of law mission compared to a state

A question could be asked about whether, in the fulfilment of its mandate, the Panel has always applied the law of the ECHR in a manner fully consonant with that body of law. The principled answer is that it tried to do so and, for the most part, probably succeeded in doing so.

The one qualification to give to that view is that EULEX is not a state. It follows that EULEX does not possess all the attributes and resources typically available to states in the performance of their governmental functions. This, in turn, has impacted the standard by which its human rights compliance was assessed by the Panel. More specifically, the Panel has stated:

“As a preliminary matter, the Panel notes that EULEX is not expected to provide better policing than the resources put at its disposal would allow. EULEX is obliged, however, to take necessary and reasonable measures within the scope of its competence to provide for the effective protection of the human rights of those who find themselves on the territory of Kosovo.”[[3]](#footnote-3)

Along the same line, the Panel also noted the following:

“The Panel is well aware that the notion of an effective remedy when applied in the context of a mission led by an international organisation cannot be construed in the same way as in the context of a national state. However, it needs to assess, having regard to the specificity of the legal situation of EULEX in that it enjoyed immunity and cases against its officials could not be directly pursued before the Kosovo courts, whether it addressed the complainant’s situation in a manner compatible with at least the minimum procedural requirements compatible with the notion of an effective remedy.”[[4]](#footnote-4)

Therefore, the Mission’s ability and capacity to guarantee the effective protection of human rights cannot be compared in all respects to the state’s abilities and the expectations that follow. [[5]](#footnote-5) Any such evaluation must take into account the specificities of the Mission that are relevant to its ability and responsibility to ensure effective compliance with relevant human rights standards. To that extent, the Panel has had to evaluate the extent to which the Mission, with its limited mandate and resources, could and did comply with standards of human rights normally applicable to a state.

Also, given its limited *executive* mandate, EULEX cannot be held responsible before the Panel for failing to guarantee a general and all-encompassing protection of human rights in Kosovo as this would have placed an impossible or disproportionate burden on the Mission.[[6]](#footnote-6) Its human rights responsibilities are therefore legally limited to the performance and fulfilment of its executive mandate in the areas listed above.

Nor can a rule of law mission be expected to replace the state in which it operates. Instead, a rule of law mission such as EULEX should be perceived as an additional layer of human rights accountability that protects the rights of those who come in contact with the mission. This does not mean that its human rights obligations are secondary or subsidiary. Instead, the Mission has its own human rights obligations, as defined above. Those, however, are to be evaluated in the broadest framework and context of the environment in which it operates and in light, in particular, of that state’s own human rights obligations.

Furthermore, differences in the way in which a state, as distinct from a rule of law mission, is structured may impact the interpretation that is given to a particular human right. For instance, whilst the concept of “effective remedy” might carry a particular meaning within a state, which typically possesses general executive responsibilities and can rely on its judicial authorities to provide effective remedies, the means by which a rule of law mission might ensure access to justice and an effective remedy for rights violations might be much narrower in scope and nature. The Panel has thus noted the following:

“The Panel is well aware that the notion of an effective remedy when applied in the context of a mission led by an international organisation cannot be construed in the same way as in the context of a national state. However, it needs to assess, having regard to the specificity of the legal situation of EULEX in that it enjoyed immunity and cases against its officials could not be directly pursued before the Kosovo courts, whether it addressed the complainant’s situation in a manner compatible with at least the minimum procedural requirements compatible with the notion of an effective remedy.”[[7]](#footnote-7)

The Panel added, however, that to the extent that EULEX has the mandate and the resources necessary to fulfil a government-like function as part of its executive mandate, it is required to perform those functions in compliance with human rights standards. In the words of the Panel:

“The Panel concludes that, as a result of insufficient resources allocated to the Vidovdan operation by EULEX with a view to ensuring respect for human rights, inadequate training and insufficient operational guidelines, complainant H and G were denied the full and effective enjoyment of their right to respect to private life, freedom of assembly as well as right to exercise their religion safely and without unnecessary hindrance.”[[8]](#footnote-8)

It should be noted here that international Missions such as EULEX might perform many of the same functions as a state and may thus present the same risks to human rights than might arise from a state’s actions. There is no reason of principle to suggest that a Mission performing such state-like functions should be less accountable than a state when it comes to human rights protection. If anything else, there are specificities attached to this type of Missions that make it all the more important that they are required to uphold the standards of human rights binding on states. First, they are typically not subjected to the jurisdiction and competence of local court and, thus, to large extent unaccountable to local laws. Their mere existence thus constitutes an exception to universal accountability in the location where they operate. Secondly, because they perform very specialized functions, they might be better suited in some instances to adopt a tailor-made mechanism of accountability that can cater to these specificities and guarantee that operational effectiveness does not conflict with the need for accountability. Lastly, a heightened expectation of human rights compliance is in order where the core function of the mission is directed towards the upholding and reinforcement of the rule of law, as is with EULEX. The Panel has thus noted the following:

“Furthermore, as a rule of law mission, EULEX is expected to pay particularly close attention to the need for the restoration, maintenance and reinforcement of the rule of law. The effective investigation and prosecution of serious crimes is a particularly important feature of this aspect of EULEX’s mandate. It is therefore essential that the Mission should interpret the requirement of “exceptional circumstances” within the meaning of Article 7(A) of the Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation […] in a way that is consistent with the fulfilment of that mandate. There is little difference between the ability of a State or a rule of law mission to prioritise the investigation of such crimes and to devote adequate time and resources to this operational priority […].” [[9]](#footnote-9)

In evaluating the extent to which a mission such as EULEX should be expected to comply with human rights standards normally applicable to states, the Panel has therefore taken into consideration a number of relevant factors, including the nature and scope of the mission’s mandate, the amount and nature of resources at its disposal to perform its functions, particular operational difficulties associated with the performance of its mandate and the absence of normally available state powers that enable enforcing the will and authority of the state.

# Substantive protected rights

## 3.1 General considerations

The Panel dealt with various substantive relevant to the cases brought before it.  Some of these issues related to Article 8 ECHR (Right to respect for private and family life), Article 9 ECHR (Freedom of thought, conscience and religion), Article 11 ECHR (Freedom of assembly and association) and Article 13 ECHR (Right to an effective remedy). The said substantive issues also related to Articles, 2, 17, 18, 21 and 22 of the ICCPR, (see, e.g. Case nos. [2012-09 to 2012-12](http://hrrp.eu/docs/decisions/Decision%20and%20Findings%202012-09;%202012-10;%202012-11;%202012-12%20pdf.pdf), A, B, C and D, Case nos. [2012-19 and 2012-20](http://hrrp.eu/docs/decisions/Decision%20and%20findings%202012-19%20&%202012-20%20pdf.pdf), H and G Against EULEX Kosovo, (“Vidovdan Cases”) as well as Case no. [2014-37](http://hrrp.eu/docs/decisions/Decision%20and%20findings%202014-37.pdf), YB Against EULEX. The Panel further ruled on Article 2 ECHR (Right to life), Article 3 ECHR (Prohibition of torture and inhuman or degrading treatment) and Article 13 in conjunction with Article 2 ECHR (see, e.g., Case nos. [2014-11 to 2014-17](http://hrrp.eu/docs/decisions/Decision%20and%20Findings%202014-11%20to%202014-17.pdf), D.W., E.V., F.U., G.T., Zlata Veselinovic, H.S., and I.R. as well as Case no. [2014-32](http://hrrp.eu/docs/decisions/Decision%20and%20findings%202014-32%20pdf.pdf), L.O. Against EULEX and Case no. [2014-34](http://hrrp.eu/docs/decisions/Decision%20and%20Findings%202014-34.pdf), Rejhane Sadiku-Syla Against EULEX).

Because of the relatively limited number of cases coming before the Panel, the caselaw of the Panel often dealt with only certain aspects of these rights. It reflects, however, minimum standards of human rights applicable in any democratic system and, in most cases, tracks the approach of the European Court of Human Rights in regards to the tenor and meaning of these rights. As such, it also makes a valuable contribution to the growing body of international jurisprudence in matters of human rights.

## 3.2 Right to life

### 3.2.1 General considerations

The bulk of the Panel’s cases pertaining to the right to life have come within the context of enforced disappearance cases (and war-killings). The body of jurisprudence arising from these cases has been fully addressed in the Panel’s case-note pertaining to that issue (<http://www.hrrp.eu/docs/Case%20law%20Note%20on%20Disappearance.pdf>) and its “White Paper” devoted to the same topic (XXX).

### 3.2.2 Substantive and procedural right associated with the right to life

The Panel has confirmed and adopted the core of the law of the right to life, as recognised and upheld before the European Court of Human Rights. In particular, the Panel has recognised that the right to life consisted of both a *substantive* right (to have one’s life being protected) and associated *procedural* rights (where loss of life occurred in suspicious circumstances suggesting a violation of that right).[[10]](#footnote-10) The latter right implies a right (and obligation on the part of the authorities) to have the circumstances of loss of life being fully and diligently investigated by competent authorities.[[11]](#footnote-11) In that context, the Panel said this:

“The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Velcea and Mazăre v. Romania*, no. 64301/01, § 105, 1 December 2009).”[[12]](#footnote-12)

The Panel also made it clear that the right to life, as guaranteed under, *inter alia*, Article 2 of the ECHR does not concern only deaths resulting from the use of force by agents of the State. The procedural obligation referred to above calls for an effective judicial system which can determine the cause of death and bring those responsible to account.[[13]](#footnote-13) The Panel made it clear that authorities must therefore ensure, by all means at their disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished.[[14]](#footnote-14)

The authorities must also ensure that they do not create a risk to the life of an individual by reason of their actions.[[15]](#footnote-15)

## 3.3 Right to protection against torture and inhuman and degrading treatment

### 3.3.1 General considerations

The Panel has dealt on a number of occasions with the rights and guarantee against torture. This fundamental and all important right is guaranteed, *inter alia*, under Article 3 of the European Convention of Human Rights, Article 7 of the ICCPR, in the 1984 Torture Convention and also under customary international law.[[16]](#footnote-16)

The prohibition against torture and the right associated with that prohibition seeks to shield individuals from torture and inhuman and degrading treatment. In particular, the Panel has made it clear that not any sort of mistreatment would fall short of the guarantee. Instead, it must meet a minimum threshold of gravity.[[17]](#footnote-17) This could take the form of actual harm, but also *threat* of harm or *risk* of harm, when serious enough to require the authorities to act.[[18]](#footnote-18) in the *Krasniqi* case, the Panel was not satisfied that this threshold had been met.[[19]](#footnote-19)

The Panel made it clear that torture requires demonstration of deliberate inhuman treatment causing serious and cruel suffering inflicted with a view to achieve one of the recognized prohibited purposes.[[20]](#footnote-20) This category of human rights violation was further defined by the Panel in those terms:

“‘the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person’ (Article 1). According to the case law of the European Court of Human Rights torture constitutes “deliberate inhuman treatment causing very serious and cruel suffering” (see, among many other authorities *Selmouni v. France* [GC], no. 25803/94, § 96, ECHR 1999-V). Similarly, Article 165 of the PCCK defines torture as “any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person”. However, the Panel observes that the complainant does not provide any details which would allow it to conclude that the treatment he has been subjected to amounts to inhuman or degrading treatment within the meaning of Article 3 of the European Convention, let alone to torture within the meaning of the same provision or within the meaning of Article 1 of the Convention against Torture, or Article 165 of the PCCK.”[[21]](#footnote-21)

### 3.3.2 Procedural rights and obligations

The right in question protects individuals against mistreatment at the hands of the authorities. In addition, the Panel also notedthat there existed for the Mission a procedural obligation to investigate credible allegations of violations of that right, as may arise in certain circumstances:

**“**article 3.3. of the Law no. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (the Law on Jurisdiction) enumerates criminal offences triggering the competence of EULEX prosecutors, among them torture (as defined in Article 165 of the Provisional Criminal Code of Kosovo (PCCK)). The Panel reiterates that, under Article 12 of the Law on Jurisdiction, EULEX prosecutors have the authority to take over an investigation or prosecution of any criminal offences, in case Kosovo prosecutors are unwilling or unable to perform their duties and this unwillingness or inability might endanger the proper investigation or prosecution. For that possibility to arise, however, the case would have to be first referred to a local public prosecutor. If then a local prosecutor was unwilling or unable to deal with the case, the complainant could notify the Chief EULEX Prosecutor, who would then decide whether to assign the case to another Kosovo public prosecutor or to an EULEX prosecutor. The Panel observes that the complainant has not shown that he brought his grievances to the attention of the Kosovo prosecuting authorities.”[[22]](#footnote-22)

## 3.4 Right to liberty

### 3.4.1 General considerations

The Panel has dealt in a number of cases with the right to liberty, as guaranteed in*ter alia* by Article 5 of the European Convention of Human Right and Article 9 of the ICCPR.

### 3.4.2 No guarantee against others

The Panel has made it clear that the right to “liberty and security of person” does not create an obligation on the part of authorities to give an individual protection from others.[[23]](#footnote-23) That right, the Panel said, is concerned with arbitrary interference by a public authority with an individual’s personal liberty and his or her freedom from arrest and detention.[[24]](#footnote-24)

### 3.4.3 Access to casefile

In one case, the Panel had to deal with the question of a complainant’s access to the judicial casefile, which may constitute an element of a person’s right to access to justice and be associated with other fundamental rights, including the right to liberty (where, for instance, the complainant is detained). In *Z against EULEX*, 10 April 2013, par 43, the Panel said the following about this particular right:

“The Panel observes that the complainant did not specify who, in his view, was responsible for the insufficient access to the case file, the prosecuting authorities or the courts. In its opinion the Panel would have jurisdiction to examine this complaint has it been shown that the prosecuting authorities were responsible for any alleged shortcoming (see paragraphs 31 - 32 above) or that the applicant had raised this complaint expressly before the courts which failed to respond to it (see paragraph 34 above).”

### 3.4.4 Lawfulness and length of pre-trial detention

The Panel determined on a number of occasions that it lacked jurisdiction to consider allegations of violations of the right to liberty associated to the length of pre-trial detention based on the fact that arose from the activities of Kosovo courts over which the Panel has no competence.[[25]](#footnote-25)

## 3.5 Right to fair trial

### 3.5.1 General considerations

The Panel has had only limited caselaw regarding the protection of the right to a fair trial. That is mainly due to the fact that it does not have jurisdictional competence over the actions of Kosovo courts.[[26]](#footnote-26) Despite the absence of competence over the activities of Kosovo courts, the panel has made a number of comments and observatiosn regarding certain aspects of the fundamental rights to a fair trial and associated guarantees.

### 3.5.2 Length of proceedings

In *Maksutaj*, the Panel has pointed out that the right to a fair and public hearing within a reasonable time as understood under Article 6 (1) of the Convention is designed to protect all parties to court proceedings….against excessive procedural delays.[[27]](#footnote-27) In addition, in criminal cases the right to prompt proceedings was said by the Panel to be designed to avoid that a person charged should remain too long in a state of uncertainty about his fate.[[28]](#footnote-28)

In considering the reasonableness of the length of proceedings, the Panel said, it is required to examine the particular circumstances of the case and consider these factors as relevant to that evaluation: (1) the complexity of the case, (2) the conduct of the applicant, and: (3) the conduct of the competent administration.[[29]](#footnote-29) As stated by the panel, un-explained delays in the proceedings, even a single incident of it, could raise an issue under that guarantee:

“The Panel considers that the handling of this particular element of the investigation by the EULEX Prosecutor, absent any cogent explanation and absent any evidence of a follow up on this line of investigation, constitutes a serious deficiency of the investigation. This has affected the overall duration of the process without any apparent benefits for its resolution. The Panel is mindful of the case-law of the Court in this regard where it has found breaches of Article 6 (1) of the Convention on the basis of a single instance of unexplained delay of sufficient duration regardless of the overall length of the proceedings (See Bunate Bunkate v Netherlands A 248-B (1993); 19 EHHR 477. Cf, Kudla v Poland 2000-XI; 25 EHHR 198 GC). The Panel takes the view that these shortcomings of the investigation had a negative impact on the overall length of time it took to decide this case and contributed to a denial of the right of the complainant to a speedy resolution of the case against him.”[[30]](#footnote-30)

In evaluating a particular course of action taken by the authorities, the Panel will also consider the consequences of that conduct upon the person or persons concerned.[[31]](#footnote-31) In *Maksutaj*, for instance, the attention of the authorities was drawn to the fact that the complainant was currently unable to get employment while under investigation and urged the EULEX Prosecutor to solve this matter. Drawing attention to the ECHR’s approach of such matters, the Panel noted that an administration is required to act with particular expeditiousness and responsiveness where a failure to do so would have particular grave consequences for the complainant.[[32]](#footnote-32) The Panel noted in relation to that particular case that despite the EULEX Prosecutor having been put on notice of the complainant’s employment difficulties arising from the proceedings, no response was provided to the complainant to his request for clarification and resolution of the matter. Not until much later did the EULEX Prosecutor issue a Ruling of Terminating the Investigation against H.N., a co-defendant of the complainant. The Panel concluded that the proceedings (which lasted from January 2009 until 15 December 2014) were not conducted with the necessary level of diligence and expeditiousness and that the case was left untouched for a long period of time and the complainant was left in the dark as to the status of his case despite repeated requests for clarification. These unjustified delays, the Panel held, resulted in a violation of the complainant’s right to a fair and public hearing within a reasonable time under Article 6 (1) of the European Convention.[[33]](#footnote-33)

In *Djeljalj*, the Panel found that that civil proceedings with regard to the property which remained pending for over five years could not be regarded as compatible with the complainant’s right to have his case heard within a reasonable time guaranteed by Article 6 (1) of the ECHR.[[34]](#footnote-34)

In examining the period of relevance to the protection of such a right, the Panel had to carefully align this assessment with the limitation placed upon its competence, *ratione temporis*.[[35]](#footnote-35)

### 3.5.3 Execution of judgment

The right to a fair trial also pertains to and involves a right to the effective execution and enforcement of a judgment in one’s favour. In *Rastelica*, the Panel said the following about the meaning of that guarantee:

“The Panel notes that the complainant’s grievance pertains to the alleged non-enforcement of final decisions rendered by Kosovo courts. It is recalled in this respect that the right to a fair hearing, guaranteed under Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe the right to the fair hearing as being concerned exclusively with access to court and the conduct of proceedings would indeed be likely to lead to situations incompatible with the principle of the rule of law. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Burdov v. Russia*, no. [59498/00](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"appno":["59498/00"]}), § 34, ECHR 2002-III; *Hornsby v. Greece*, 19 March 1997, p. 510, § 40, Reports of Judgments and Decisions 1997-II). 81. An unreasonably long delay in the enforcement of a binding judgment may therefore breach the right to a fair hearing. The reasonableness of such a delay is to be assessed having particular regard to the complexity of the enforcement proceedings, the applicant’s own conduct and that of the competent authorities, and the amount and nature of the court award (see *Raylyan v. Russia*, no. [22000/03](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"appno":["22000/03"]}), § 31, 15 February 2007).”[[36]](#footnote-36)

The same general principle would arise from the right to have access to court.[[37]](#footnote-37) The Panel also made it clear that the fact that local courts are encountering difficulties or have limited resources does not provide a valid justification for any sort of delay in the execution/implementation of a judgment or the proceedings remaining ineffective.[[38]](#footnote-38)

### 3.5.4 Administrative authorities deciding issues of rights

In line with the ECHR, the Panel has made it clear that is not incompatible with Article 6(1) of the Convention to confer the power to adjudicate on civil rights and obligations on administrative authorities, provided that their decisions are subject to subsequent control by a “tribunal” that has full jurisdiction.[[39]](#footnote-39) Nor is it obligatory for the bodies employing persons enjoying the status of civil servants to ensure, in internal proceedings relating to matters concerning employment, career and dismissal, the full procedural guarantees of that provision, provided that an appeal against their decision before a tribunal fulfilling these requirements is subsequently available.[[40]](#footnote-40)

Furthermore, the Panel added, the issue of fairness of judicial proceedings in carrying out a review of administrative decisions has to be examined not in the abstract, but on a case-by-case basis once the proceedings were terminated.[[41]](#footnote-41)

### 3.5.5 No personal right to prosecution guaranteed

The Panel also had occasion to make clear that the right to a fair trial does not endow individuals with a private right to prosecution:[[42]](#footnote-42)

### 3.5.6 Right to access to court

The right to a fair trial also protects an individual’s right to have access to court in order to have his claim addressed by competent judicial authorities.[[43]](#footnote-43) This right, the Panel made clear, does not provide the individual in question with the right to succeed in his or her claim, but only to have it considered by the competent authorities in accordance with the law.[[44]](#footnote-44)

The Panel also noted that an individual may not benefit from the further guarantees laid down in paragraph 1 of Article 6, namely fair, public and expeditious judicial proceedings if such proceedings are not first initiated.[[45]](#footnote-45) Similarly, in civil matters, one can scarcely conceive of the rule of law without there being a possibility of having access to the courts.[[46]](#footnote-46)

Although the right of access to court may be subject to limitations in the form of regulation by law, they must pursue a legitimate aim and there must be a reasonable relationship of proportionality between them and the aim sought to be achieved.[[47]](#footnote-47) And in no case can the limitations applied restrict or reduce the access afforded to the applicant in such a way or to such an extent that the very essence of that right was impaired.[[48]](#footnote-48)

The Panel also made clear that a requirement to pay fees to civil courts cannot be regarded as a restriction on the right of access to a court that is incompatible, *per se*, with Article 6(1) of the Convention.[[49]](#footnote-49) Such a determination largely depends on the amount of the fees assessed in light of the particular circumstances of a given case, including the applicant’s ability to pay them, and the phase of the proceedings at which that restriction has been imposed that are material in determining whether or not a person has enjoyed his/her right of access.[[50]](#footnote-50) In the *Radunovic* case, for instance, the Panel noted that a requirement to provide translations of relevant documents into English may constitute a serious financial burden for some claimants, such as the complainant, who is an unemployed IDP and is living on modest benefit. This might undermine the claimant’s ability to seek and obtain a relief to which she would otherwise be entitled by law.[[51]](#footnote-51)

## 3.6 Right to family life and privacy

### 3.6.1 General considerations

The Panel has had occasion to rely on Article 8 of the European Convention of Human Rights, which protects the right to respect for private and family life. In *Y against EULEX*, for instance, the Panel held that, consistent with the case-law of the European Court of Human Rights, a person’s reputation constitutes part of the right to respect for private life, and is therefore protected by Article 8 of the Convention.[[52]](#footnote-52) However, the Panel said, in order for Article 8 to be violated, the attack on a person’s honour and reputation must attain a certain level of gravity.[[53]](#footnote-53) The Panel found that this had not been established in this particular case.

### 3.6.2 Right to “private life” as a broad notion

The Panel noted that, according to the ECtHR’s case-law, the notion of “private life” is a broad one and is not susceptible to exhaustive definition; it may, depending on the circumstances, cover the moral and physical integrity of the person.[[54]](#footnote-54)

### 3.6.3 Negative and positive obligations arising for the authorities from this right

The Panel further stated that, although the object of Article 8 of the European Convention is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the authorities to abstain from such interference; it might also require positive acts on their part:

“in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. The boundaries between the positive and negative obligations of the authorities under Article 8 do not lend themselves to precise definition, but the applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the general interest and the individual interests; and in both contexts the authorities enjoy a certain margin of appreciation (see, among many other authorities, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 114, 12 June 2014, *Schüth v. Germany*, no. 1620/03, § 55, ECHR 2010; *Von Hannover v. Germany*, no. 59320/00, § 57, ECHR 2004‑VI).”[[55]](#footnote-55)

The question of the boundaries of those positive obligations where raised in the *Krlic* case where the main question was whether EULEX was required, in the context of its positive obligations arising from that right, to uphold the complainant’s right to respect for his private life by allowing him entry to Kosovo and a visit to his acquaintance and a church there. In the circumstances of the case, the Panel found that this was not the case:

“27.The Panel finds that the complainant did not comply with the applicable procedural requirements. The requirements applying to visits of Serbian government officials were specified in the informal agreement, in force and followed by Serbia and Kosovo since 2009. The applicant did not comply with these as he had not lodged a request to the Office of the Deputy Prime Minister of Kosovo. In the Panel’s view the complainant has adduced no persuasive arguments that he could not have known the established procedure. He holds a position in the Office for Kosovo and Metohija and had visited Kosovo with his superior on a number of occasions prior to the situation complained of (see requests for police escort document submitted by EULEX, par. 12 above) and would therefore have to be aware of the applicable formalities.

28.The Panel will leave open the question whether, for the purposes of the present case, Kosovo should be considered a separate state or not with regard to entry requirements.

29.In view of the above, the Panel considers that the EULEX Border Police acted within their margin of appreciation, that a fair balance has been struck between the competing interests in the present case and, consequently, a refusal to allow the complainant entry into Kosovo was justified in the circumstances of the case. Accordingly, there was no violation of Article 8 of the Convention.”[[56]](#footnote-56)

The positive obligations arising out of this fundamental right may also require of the authorities to keep victims informed of the evolution of an investigation pertaining to the violation of their rights under Articles 2 or 3 ECHR.[[57]](#footnote-57)

### 3.6.4 Protection of a person’s home and certain professional or business activities or premises

The Panel made clear that Article 8 of the European Convention also protects a person’s home and certain professional or business activities or premises.[[58]](#footnote-58) The Panel also held that the failure of the authorities to safeguard a person’s physical or moral integrity or to prevent attacks on their home and property can raise issues under Article 8 of the Convention in the context of their positive obligations inherent in this provision.[[59]](#footnote-59)

### 3.6.5 Right to family life and privacy and the protection of one’s good name and reputation

In the *Y* case, the Panel said that this guarantee was relevant to protecting individuals from allegations by the authorities that they committed criminal acts where they were not themselves defendants in a criminal case:

“In the present case, it was implied in the indictment that the complainant participated in an organised crime group in order to murder a “rival crime boss” which constitutes a serious criminal offence (see par. 9 above). A statement couched is such terms made in an official indictment seems to amount to an affirmation that the complainant did commit the crimes concerned, although he is not indicted in the criminal proceedings in question (even if he was arrested in Bosnia and Herzegovina in relation to a different criminal offence). Elsewhere, it has been implied that the complainant’s wife had been “in a relationship” with the victim before she had married the complainant (see par. 9 above). Revealing intimate aspects of the complainant’s and his wife’s private life, whether true or false, also amount to an interference with the complainant’s right to respect to his private life.”[[60]](#footnote-60)

In that case, the Panel found that the interference with the complainant’s protected rights had been taken “in accordance with the law” and pursued a legitimate aim enumerated in Article 8(2), notably the prevention of disorder or crime. However, when evaluating whether the interference served a legitimate aim and whether it struck a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights,[[61]](#footnote-61) the Panel came to the view that this was not the case and laid out its reasons for that view *in extensu*:

“The question remains, therefore, whether a fair balance has been struck between the competing public and private interests in this case. In his submissions, the HoM argued that naming the complainant in the indictment was indispensable to present the Basic Court with all the facts and to mount an effective prosecution of N.K. The Panel is not persuaded by those arguments. The Panel acknowledges that it might have been impossible to indict N.K. of organised crime and argue the case against him without referring to other persons involved. Nonetheless, from the wording of the indictment it appears that, without it serving any purpose in the case against N.K., the Prosecutor made an assertion of fact that the complainant had committed a serious crime. Nowhere in the indictment is it made clear that the complainant is not, in fact, a suspect and that no criminal proceedings are pending against him. To the contrary, he is called in no uncertain terms a “co-perpetrator” and a “gang boss” (see paragraph 9 above). These statements, in the Panel’s view, go much further than describing a mere state of suspicion.

50. The Basic Court of Pristina also pointed it out in its order of 4 December 2014, when it stated that “the indictment formulated by the Prosecutor can easily be understood in a way that he is at least accused in the case” (see par. 15 above). Furthermore, the Panel observes that there seems to be no reason why the complainant and other alleged “co-perpetrators” should be mentioned by name at this stage of the proceedings and why it did not suffice to refer to them in more general terms (for instance “other persons”) or using their initials.

51. Likewise, the Panel sees no cogent reasons why invoking the complainant’s wife’s personal life as an alleged reason for his “hate” towards the victim would have any material relevance to the case against N.K.

52. On the whole, no arguments have been adduced to show that the case of prosecution against N.K. could not be mounted effectively with the description of the facts presenting the complainant’s alleged involvement in the offences in which N.K,. was believed to be involved in a more nuanced manner.

53. The Panel observes that the above portrayal of the complainant in an authoritative prosecutorial act, in a manner which indicated rather certainty than possibility or suspicion on the prosecution’s part, was was capable of stigmatizing him and of having a major impact on his personal life and reputation.

54. In the light of the above, the Panel finds that the interference with the complainant's right to respect for his private life was not sufficiently justified in the circumstances and, as such, was disproportionate to the legitimate aims pursued. Accordingly, it gave rise to a violation of Article 8 of the Convention.”

### 3.6.6 Protection of witnesses and disclosure of information

In the case of *W against EULEX*, the complainant alleged that his witness statement (in a serious criminal case) and personal details had been disclosed to the Serbian authorities without his consent. The Panel found that the collection and use of information by officials about an individual without prior consent could interfere with his right to respect for his private life as guaranteed under Article 8 of the Convention.[[62]](#footnote-62) Consistent with the general standard applicable to the restriction of that right, the Panel said further that such an interference will contravene Article 8 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 of Article 8 and furthermore is “necessary in a democratic society” in order to achieve them.[[63]](#footnote-63) In this particular case, the Panel found that the right of the complainant had been severely violated, highlighting in particular the absence of a clear legal basis authorising the course taken by the Mission, the failure of the Mission to carry out a risk assessment prior to taking that course and the express request of the complainant that this information not be disclosed to other authorities.[[64]](#footnote-64) The Panel further made the following important findings in relation to the requirement of proportionality of the course taken by the Mission:[[65]](#footnote-65)

“46.The Panel will now consider whether a fair balance has been struck between the complainant’s private life interests and the legitimate aim of conducting an effective investigation into those events. According to the Court’s 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 the legitimate aim pursued (see, among many other authorities, *Olsson v. Sweden* (no. 1), 24 March 1988, par. 67, Series A no. 130). The Court must accordingly ascertain whether, in the circumstances of the case, the disclosure of the complainant’s statement struck a fair balance between the relevant interests, namely his right to respect for his private life, on the one hand, and the prevention of disorder and crime, on the other (see, for instance, *mutatis mutandis*, *Keegan v. Ireland,* 26 May 1994, par. 30, Series A no. 290).

47.The Panel observes in this context that it is a normal civic duty for individuals to give evidence in criminal proceedings (*Voskuil v. the Netherlands* no. 64752/01, judgment of 22 November 2007, par. 86). It also appreciates the strong interest of the international community in detecting, preventing and punishing serious crime, in particular war crimes. It is not disputed that the current trend towards strengthening cooperation in the investigation and prosecution of war crimes is, in principle, in the interests of the persons concerned (see, *mutatis mutandis, Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, par. 110). However, as discussed below, the responsibility to investigate and prosecute serious crimes also entails responsibilities on the part of competent authorities to protect those who provide them with information, i.e., witnesses.

48.The Explanatory Report attached to the Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice makes it clear (par 26) that “[t]he duty to give testimony implies a corresponding duty on the state to provide measures which will foster the safety of witnesses and collaborators of justice”. Interests of witnesses are, in principle, protected by substantive provisions of the Convention, which imply that criminal proceedings should be organised in such a way that those interests are not unjustifiably imperiled. Witness’s life, liberty or security of person may be at stake. (see e.g. *Doorson v. the Netherlands,* judgment of26 March 1996 par. 70; *Van der Heijden v. the Netherlands*, judgment of 3 April 2012, par. 76). The responsibility to protect witnesses may imply a positive obligation on the part of the authorities to take measures to ensure the safety and security of witnesses although this obligation must not impose an impossible or disproportionate burden onto them (see, e.g., *J.L. v Latvia*, Application no. 23893/06, judgment of 17 April 2012, in particular, pars 68 *et seq*; *Van Colle v the United Kingdom*, Application no. 7678/09, judgment of 13 November 2012, in particular, pars 88 *et seq*; *Osman v The United Kingdom*, Application no. 87/1997/871/1083, judgment of 28 October 1998, par. 115; *R.R. and Others v Hungary*, Application no. 19400/11, judgment of 4 December 2012, pars 22 *et seq;* see alsoCouncil of Europe, Committee of Ministers, Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice, adopted by the Committee of Ministers on 20 April 2005, at the 924th meeting of the Ministers’ Deputies and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985).

49. Considering the gravity of the alleged crimes in relation to which he provided information, the genuine fear expressed by the witness and the volatile environment in which he lives, EULEX Prosecutors knew or ought to have known that the unconditional disclosure of his statement to the Serbian authorities could potentially expose the complaint and his family to potential harm which should have been avoided. EULEX Prosecutors failed to take measures within the scope of their powers which, judged reasonably, might have been expected in order to avoid or reduce that risk (see, again, *R.R. and Others v Hungary*, cited above, par. 29; Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice: “member states have a duty to protect witnesses against such interference by providing them with specific protection measures aimed at effectively ensuring their safety”). Such measures might have included, for instance, redacting the identifying features of the witness or seeking protective measures or non-disclosure orders from the competent authorities prior to communicating his statement. EULEX Prosecutors did not therefore do all that could reasonably have been expected of them in the circumstances and potentially exposed the complainant and his family to unjustified risks that should have been avoided (see, also, *mutatis mutandis*, *Bevacqua and S v. Bulgaria*, Application no. 71127/11, judgment of 12 September 2008; *A. v. Croatia*, Application 55164/08, judgment of 14 October 2010).

50. Finally, the Panel is not persuaded by the argument that the fact that the complainant agreed to give testimony to the Serbian prosecutors in September 2012 proved that he did not, in reality, fear them. The Panel notes that the complainant, in his reply to the observations, stressed that he had only agreed to testify against one suspect who was currently in detention. He implied that he was afraid of retaliation from other suspects who are still at large. Such an explanation is not unreasonable in the circumstances. Furthermore, he was accompanied on that occasion by EULEX staff. In any event, the fact that the complainant was persuaded to overcome his reservations and that he cooperated with the Serbian authorities under the apparent oversight of EULEX does not in any way diminish the anguish that he might legitimately feel regarding his information having been shared with unidentified Serbian officials who, in turn, might have shared it with other persons.

51. The Panel finds that, in the circumstances of this case, the legitimate aim of prosecuting those suspected of having committed war crimes was not a sufficient reason to justify disclosing the complainant’s statement and personal details without his consent, without a proper legal basis, without judicial oversight and without any protective measures having been taken to limit the risks involved in the disclosure of that information.

[…]

53. The Panel will repeat here its observations made in par. 50 that the complainant’s cooperation with Serbian authorities did not in any way absolve EULEX of its own responsibilities towards the complainant. In particular, the Panel notes that there is no recorded indication of EULEX having conducted an evaluation of the necessity and proportionality of its disclosing without condition and without any sort of oversight the un-redacted statement of the complainant to the Serbian authorities.”

## 3.7 Freedom of assembly and association and freedom of religion

### 3.7.1 General considerations

The Panel has had occasion to deal with the right of individuals to (peaceful) assembly, consistent with Article 11 of the European Court of Human Rights and Article 21 ICCPR.

In that context, the Panel made it clear that an interference with that right may arise from acts of violence directed at people seeking to exercise that right.[[66]](#footnote-66) On that basis, the Panel said this, echoing the ECtHR on that point:

“The Panel reiterates that “[a] demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art. 11). Like Article 8 (art. 8), Article 11 (art. 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be […].”[[67]](#footnote-67)

The Panel added the following about the nature of the duty attaching to public authorities regarding the effective enjoyment of that right:

“While under the case-law of the EHCR it is the duty of the public authorities to take reasonable and appropriate measures with regard to lawful demonstrations to ensure their peaceful conduct and the safety of all citizens, they cannot guarantee this absolutely and they have a wide margin of discretion in the choice of means to be used. In this regard the obligation they enter into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved […].”[[68]](#footnote-68)

### 3.7.2 Foresight, planning and adequate allocation of resources by the authorities

The effective protection of this right also requires a degree of foresight on the part of the authorities where violence can be reasonably expected.[[69]](#footnote-69) It is important in that context that preventive security measures such as, for example, the presence of police and first-aid services at the demonstrations, be taken in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature.[[70]](#footnote-70) The authorities will be expected to take reasonable measures to ensure the peaceful enjoyment of that right, despite foreseeable opposition by third parties to its exercise:

“It is further reiterated that, while those who choose to exercise their freedom to manifest their conscience or their religion cannot reasonably expect to be exempt from all criticism, the responsibility of the public authorities may be engaged where their beliefs are opposed or denied in a manner which inhibits those who hold such beliefs from exercising their freedom to hold or express them. In such cases the authorities may be called upon to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs (see, mutatis mutandis, Otto-Preminger-Institut v. Austria, 20 September 1994, § 47, Series A no. 295-A; Öllinger v. Austria, no. 76900/01, § 39, ECHR 2006-IX).”[[71]](#footnote-71)

This obligation upon the authorities might also require the authorities to have a clear operational plan in place and adequate staff available (in number and nature) in order to guarantee the effectiveness of that right when the authorities have received information raising the possibility of challenges (including violent challenges) to the effective exercise of that right.[[72]](#footnote-72) From the point of view of the Mission, the fact that a police operation was led by the local (Kosovo) authorities does not release EULEX from its *own* responsibility to ensure that its involvement in these events was consistent with relevant human rights standards.[[73]](#footnote-73)

Based on these considerations, the Panel concluded in relation to violence surrounding the events surrounding the *Vidovdan* celebrations that the Mission had failed to take adequate steps to protect that right effectively and found that the Mission had therefore violated the right of the complainants to assemble:

“The Panel concludes that, as a result of insufficient resources allocated to the Vidovdan operation by EULEX with a view to ensuring respect for human rights, inadequate training and insufficient operational guidelines, complainant H and G were denied the full and effective enjoyment of their right to respect to private life, freedom of assembly as well as right to exercise their religion safely and without unnecessary hindrance.”[[74]](#footnote-74)

### 3.7.3 Freedom of religion

The Panel also applied the general elements of the guarantee of freedom of religion as recognised, *inter alia*, in Article 9 of the European Convention of Human Rights. It applied it, in particular, in parallel to the right of individuals to exercise their right of assembly in the context of religious events. The principles laid out above in relation to the right of assembly were made to apply to the effective protection of the right of religion and conscience.[[75]](#footnote-75)

## Right to an effective remedy

### 3.8.1 General considerations

As part of its work, the Panel has reviewed a number of complaints and issued decisions pertaining to the right to an effective remedy, as guaranteed *inter alia* under Article 13 of the European Convention and Article 2(3) of the ICCPR. The right is a self-standing fundamental right.[[76]](#footnote-76) Its scope of application varies depending on the nature of the applicant’s complaint. In every case, however, the remedy required by Article 13 must be “effective” in practice as well as in law.[[77]](#footnote-77) To be effective, the remedy must be able to address the violation complained of.[[78]](#footnote-78)

Where alleged failure by the authorities to protect persons from the acts of others is concerned, Article 13 may not always require that the authorities undertake the responsibility for investigating the allegations.[[79]](#footnote-79) Nevertheless, where such a remedy exists, it must be effective, that is, capable of providing redress and offered reasonable prospects of success.[[80]](#footnote-80)

Regarding the substance of that right, the Panel said the following in general terms:

“The Panel reiterates the approach of the European Court of Human Rights (hereinafter “the Court”) whereby “*Article 13 states that any individual whose Convention rights and freedoms "are violated" is to have an effective remedy before a national authority even where "the violation has been committed" by persons in an official capacity. This provision, read literally, seems to say that a person is entitled to a national remedy only if a "violation" has occurred. However, a person cannot establish a "violation" before a national authority unless he is first able to lodge with such an authority a complaint to that effect. Consequently, (…) it cannot be a prerequisite for the application of Article 13 that the Convention be in fact violated. In the Court’s view, Article 13 requires that where an individual considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress* (see *Klass v. Germany*, no. 5029/71, judgment of 6 September 1978, at par 64).”[[81]](#footnote-81)

The Panel added that “[t]*he effect of Article 13 is thus to require the provision of a […] remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief*”.[[82]](#footnote-82) The Panel also adopted the view of the European Court of Human Rights that such a right should exist whenever the claim of right violation is arguable.[[83]](#footnote-83)

The Panel noted, however, that the specificity of a rule of law mission, as distinct from a state, might impact the nature of the remedy to be offered.[[84]](#footnote-84)

### 3.8.2 Organisation and transfer of files

This right might also require the authorities to diligently record and, in turn, duly register grievances brought to its attention.[[85]](#footnote-85) In the *Becic* case, the Panel thus found a violation of the complainant’s right to an effective remedy based on the Mission’s failure to put in place a reliable system of recording and registering complaints involving allegations of violations of rights, which resulted in the case of the complainant not being adequately investigated:

“The failure of EULEX at the time to put in place a reliable system of recording and registering complaints involving allegations of violations of rights resulted in the case of the complainant remaining dormant for a period of approximately two years and nine months. During that period, EULEX was therefore not diligently discharging its mandate in relation to that complaint. The fact that the Kosovo authorities were also competent in relation to this matter does not discharge EULEX of its own obligations to act at all times in a manner that is consistent with minimum standards of human rights.”[[86]](#footnote-86)

### 3.8.3 Duty to investigate and to provide information to victims or their relatives

In combination with other fundamental rights, the right to an effective remedy might require of the authorities that they diligently investigate credible allegations of rights violation. This can be illustrated by Case No. 2011-20, *X and 115 Others Against EULEX*, (“The Roma lead poisoning case”). The complainants were part of a larger group of approximately six hundred Kosovo Roma, Ashkali and Egyptians who were displaced during the armed conflict in Kosovo in 1999. Their homes had been destroyed in 1999 and they were subsequently housed in camps in northern Mitrovica. These camps had been polluted as they were situated near the Trepce Mines in Mitrovica. The complainants alleged that the pollution resulted in many of them suffering from lead-induced ailments which they contracted during their extended stay in the camps. The Panel held on 22 April 2015 that there had been a violation of Article 13 of the Convention by EULEX Kosovo by virtue of the fact EULEX Kosovo did not open an investigation into the matter before 14 April 2015 when it was still possible to do so. The Panel found that ability of the complainants to seek and obtain an effective remedy was thereby adversely affected.[[87]](#footnote-87)

Similar findings were made by the Panel in a number of other cases pertaining to “enforced disappearance” or war-related assassinations, which remained uninvestigated or not fully investigated. In the *L.O.* case, for instance, the Panel found that the Mission had violated the complainant’s Article 13 right by failing to fully and properly investigating the circumstances of the disappearance of her husband in suspicious circumstances linked to the Kosovo conflict.[[88]](#footnote-88) In particular, the Panel noted that investigative steps must be commensurate in nature with the gravity of the alleged violation.[[89]](#footnote-89) In this case, the alleged violation could not be any more serious. The Panel thus said that one could therefore have expected the Mission to involve significant resources in personnel, time and resources into this case. This did not happen. The Panel further noted that there was no indication that witness statements had been taken by the EULEX Prosecutors or that any credible forensic investigation was conducted by the Mission. Nor was there any indication of the lines of investigation that were pursued in this case or what efforts were made to identify suspects. No information was provided to the Panel to suggest that the EULEX Prosecutors had contacted potential sources of information and no statement was taken from the complainant, her daughter or any other close relative who might have had information of value to the investigation. There was apparently only one direct verbal contact between the complainant and the Mission, which also appears to have reacted only when prompted to do so by the complainant. Such a record is not, the Panel said, such as to guarantee the procedural protection guaranteed by Article 2 and 3 of the Convention and was said to have negatively affected the complainant’s enjoyment of her rights under Article 8 and 13 of the Convention.[[90]](#footnote-90) The Panel noted, furthermore, that the Mission’s response to the complainant’s efforts was far from adequate: “Her many efforts resulted only in her receiving the bare minimum amount of information and only when she pressed for answers. Little that is apparent to the Panel was done to keep her involved in or abreast of the process.”[[91]](#footnote-91) The Panel also underlined the importance that investigative authorities should attach to the manner in which they communicate with victims of rights violations or their close relatives and said that the Mission fell short of that standard considering the tone, manner and superficial way in which it had communicated with the complainant.[[92]](#footnote-92) The Panel further noted that EULEX’s competence and responsibility to investigate crimes falling within its mandate is not conditioned by the actions of an injured party. In a case such as this one, the Mission was said to be responsible to act *proprio motu* with a view to ensuring that the disappearance is being diligently, promptly and effectively investigated.[[93]](#footnote-93) Accordingly, the Panel held, a rejection of the complainant’s requests for information in no way affected the Mission’s *proprio motu* obligations to guarantee the effectiveness of the complainant’s fundamental rights.[[94]](#footnote-94) The Panel concluded on that basis that EULEX’s investigative efforts in this case had been insufficient and inadequate to guarantee the effective protection of the complainant’s rights under Articles 2, 3 (procedural limbs), 8 and 13 of the European Convention.[[95]](#footnote-95)

In the same case, the Panel also made it clear that a mere theoretical possibility that another, new, mechanism of investigation might take care of investigating the matter did not meet the requirements of an effective remedy.[[96]](#footnote-96)

The right to an effective remedy also requires that the authorities provide the victims or their relatives with sufficient information about the course of the investigation into the violation of their rights. That information does not have to be exhaustive of all investigative efforts. Nor does it have to be contemporaneous of any step taken. It must, however, be such as to provide general information of the steps being taken by the authorities to establish the circumstances of the violation of rights concerned. This matter is discussed extensively in the Panel’s *HRRP Case-Law Note the Duty to Investigate Allegations of Violations of Rights*.[[97]](#footnote-97)

Where the authorities decide to close an investigation, this might also require of them to render a reasoned decision explaining in general fashion their reasons for closing the matter.[[98]](#footnote-98)

### 3.8.4 Preventing or interfering with the possibility of a remedy

This right may also cover situations where the authorities have taken steps or failed to take steps that result in making it impossible or overly onerous for the victim of a rights violation to obtain access to a remedy for that violation. In *Zahiti*, for instance, a female member of the Kosovo police was intentionally rammed by an EULEX police officer with his car. The Panel made it clear that the attack itself could not be attributed to the Mission*.* Rather,it said that it wascalled upon to determine whether, in the circumstances of the case and for the purposes of the effective exercise of its executive mandate, EULEX was obliged to provide adequate legal avenues with a view to ensuring adequate redress for the complainant and thus to comply with its human rights obligations under Articles 8 and 13 of the ECHR.[[99]](#footnote-99) The Panel considered several potential avenues of relief advanced by the Mission in its submissions as a form of remedy for the harm done to the victim. First, the Panel made it clear that it could not itself be regarded as such a remedy:

“EULEX’s reference to the Panel’s existence in that context is without merit. Firstly, EULEX bears its *own* responsibility to provide an effective remedy for violations of rights attributable to the mission. Placing EULEX’s own responsibility to provide such a remedy on the Panel would be inconsistent with EULEX’s mandate and obligation to meet its own human rights obligation in the fulfillment of its executive mandate. Secondly, the Panel is not empowered to order or recommend financial compensation even where this would be otherwise appropriate (see Annex J of the EULEX OPLAN). Therefore, where this form or reparation would be appropriate, it would be unavailable to the complainant before the Panel.”[[100]](#footnote-100)

Secondly, the Panel also rejected the suggestion that the complainant could have had access the complainant could have recourse to the Third Party Liability Claim Insurance as a means of effective remedy. The Panel noted, in particular, that EULEX had throughout its submissions taken the view that it is not responsible for the injury caused to the complainant so that it could not see how a request to EULEX to compensate for something it denies being responsible for could be regarded as an effective relief which the complainant should reasonably be expected to have pursued.[[101]](#footnote-101) Furthermore, the Panel noted that whilst such a procedure might result in compensation for pecuniary damage, the Panel notes that the Mission has not so far considered offering any compensation to the complainant in this regard.[[102]](#footnote-102)

Thirdly, the Panel considered whether the Mission’s Internal Investigation system offered such a relief. It came to the view that it did not in this case, based on a number of considerations: first, the Panel noted the Mission’s failure to have the alleged victim interviewed about the incident so that her version of events could be compared with that of the alleged perpetrator. The Panel noted that after an initial attempt to contact the victim, the Mission did not take any other steps which could have been reasonably expected in the circumstances with a view to obtaining relevant information from the complainant. The Panel pointed out that the Mission was immediately aware of the incident and thus could have been expected to renew its efforts to take a statement from her. No persuasive grounds for this failure to establish the circumstances were adduced so that the Panel concluded that the complainant was not given an opportunity to be heard.[[103]](#footnote-103) The Panel added the following about the Mission’s Internal Investigations system before concluded that it did not provide an adequate remedy as understood under Article 13 of the ECHR:

“76. It is not necessary for the Panel to take a position, in the circumstances of the present case, as to whether EULEX’s internal investigations could be said to constitute an “effective remedy” where an allegation of human rights violation is at stake. It merely notes, in that regard, that the regime in place is not “independent” of EULEX, that it has not been shown that it can directly lead to an award of compensation to a victim, that it cannot render binding decisions and leaves the final decision upon the application of a disciplinary measure to the discretion of the HoM. In any event, in the present case the applicant was not given an opportunity to participate in the internal investigation in any procedural role.

77. It is further noted that the internal investigation in this case concluded that a violation of the Code of Conduct did in fact occur (see par. 16 above and 2012-14, [*Zahiti v EULEX*](http://www.hrrp.eu/docs/decisions/Admissibility%20decision%202012-14%20pdf.pdf), 7 June 2013, par. 27). In the proceedings before the Panel EULEX advanced no arguments to demonstrate that in those circumstances, it was consistent with the rights of the complainant to abandon the enquiry without any formal decision being given and thereby deny her the possibility of seeking redress. Nor has it been explained satisfactorily why the possibility of lifting the immunity of the staff member was not considered.

78. Further, the Panel notes that it has not been shown that either the Code of Conduct applicable at the time, nor the current Code of Conduct, provided a legal basis for the closure of an enquiry into the case due to the repatriation of the seconded staff member. These instruments provide for such a possibility *only* for cases that appear not to be sufficiently substantiated. It has not been argued, let alone shown, that the complainant’s allegations were unsubstantiated.

79. Furthermore, the Panel accepts that from the moment of repatriation of individuals subject to it, they cease to be EULEX staff members. This, however, does not absolve the Mission from its obligations regarding human rights accountability. The departure of the staff member did not therefore put an end to the Mission’s obligation to abide by the complainant’s human rights and to act in accordance therewith. It is for EULEX to decide what measures are available to it in such situations. In the present case EULEX neither contacted EEAS Services with a view to liaising through them with the authorities of the sending state, if only to ensure that the conduct of the staff member should be properly recorded for the purposes of his professional evaluation, nor has EULEX demonstrated in the proceedings before the Panel that it ever envisaged doing so.”

The Panel finally added that what remedy might be left to the complainant (namely, to try to take her case outside of Kosovo to the competent national authorities of the concerned EULEX staff member) would be clearly too onerous and of uncertain availability to be characterized as “effective” in the circumstances. The Panel also noted that, considering that such a “remedy” falls exclusively within the jurisdiction and competence of the national authorities, it could not be said to serve as an effective remedy when it comes to EULEX’s own actions and responsibility. In this regard, the Panel underlines that Article 10 of the Joint Action cannot be read as to imply that the seconding state of a staff member takes over EULEX’s institutional accountability for human rights violations.

The Panel, therefore, concluded, in the circumstances of this case, that EULEX violated the right of the complainant to an effective remedy, as guaranteed *inter alia* under Article 13 of the ECHR, enabling her to seek reparation for the harm done to her by an EULEX staff.

## 3.9 Right to property

### 3.9.1 Reliance on Article 1 Protocol 1 ECHR

The Panel also dealt with a number of cases involving issues pertaining to the right of property. To define the boundaries of that right, the Panel relied upon and applied Article 1 of Protocol 1 to the ECHR.

### 3.9.2 Notion of possession

In line with that guarantee, the Panel has made it clear that an individual can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his “possessions” within the meaning of this provision. “Possessions”, the Panel held, can be either “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right.[[104]](#footnote-104) The Panel added the following regarding the notion of “possession”:

“The concept of “possessions” in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1.”[[105]](#footnote-105)

No legitimate expectation of enjoyment of property can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant’s submissions are subsequently rejected by the national courts.[[106]](#footnote-106)

### 3.9.3 Conditions of lawful interference with right to property

The Panel made it clear that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be its lawfulness: a deprivation of possessions is permissible only “subject to the conditions provided for by law” and authorities have the right to control the use of property by enforcing “laws”.[[107]](#footnote-107)

Article 1 of Protocol No. 1 also requires that a deprivation of property for the purposes of its second sentence of that provision must be in the public interest and must pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised.[[108]](#footnote-108) The Panel considered these requirements in the *Rudi* case, in which it said the following:

“78. As to the lawfulness of the decision not to comply with the IOB’s decision of 10 August 2010, the Panel observes that the complainant was not given any written reasons for it.

79. It is further noted that in its submissions the HOM has not provided an explanation, referring to the concrete facts of the case, of why the complainant’s reinstatement in accordance with the IOB decision would hinder the interests of the service. Likewise, it has not been shown that the complainant has ever been informed of such factual grounds, either orally or in writing.

80. In this context, it is further noted that no argument has been developed by the HOM to show that this refusal had legal basis and no concrete provision of law has been referred to.

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

82. Having regard to the absence of grounds for the contested decision and to the failure to indicate a legal provision that could be construed as the basis for it, the Panel finds that the impugned interference with the complainant’s right to the peaceful enjoyment of his possessions, in the form of a “legitimate expectation”, cannot be considered “lawful” within the meaning of Article 1 of Protocol No. 1.”

The Panel also determined that Article 1 of Protocol No. 1 requires that any interference with this fundamental right must be reasonably proportionate to the aim sought to be realized. [[109]](#footnote-109) Consequently, an interference must achieve a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden.[[110]](#footnote-110)

Moreover, the Panel has made it clear in relation to this right that the principle of “good governance” requires that where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency.[[111]](#footnote-111)

Applying the principles outlined above, the Panel said the following in the *Rudi* case:

“75. In this connection, the Panel notes that the Director of the FIC, acting upon advice emanating from EULEX, prevented the complainant from resuming his work after the final decision by the IOB had ordered that he be reinstated in his post. By the same token, it was decided not to comply with the IOB’s decision in so far as it ordered that the applicant’s salary due for the period from 28 February 2010 onwards should be paid to him.

76. The Panel is of the view that the refusal to comply with the IOB decision amounted to an interference with the complainant’s right to the peaceful enjoyment of his possessions.”[[112]](#footnote-112)

### 3.9.4 Overall assessment of conduct of authorities

In assessing compliance with Article 1 of Protocol No. 1, the Court must conduct an overall assessment of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are “practical and effective”. In that context, it has been stressed by the Panel that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the conduct of official authorities.[[113]](#footnote-113) Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner. [[114]](#footnote-114)

### 3.9.5 Impermissible interference does not require loss of control over property

In *Djeljalj,* an impermissible interference with the right to property does not require a loss of physical control of the property. In that case, the Panel said that the complainant’s right to control the impugned property and to peacefully enjoy it was interfered with as a result of the following set of facts: Firstly, the property was used, unbeknownst to the complainant, as collateral to a bank loan taken out by third party. Secondly, as that party defaulted on the loan, the bank started execution proceedings. Thirdly, the judicial decision lifting the collateral status remains unexecuted as the property remains listed as collateral. Fourthly, the complainant’s efforts to have this status properly registered were unsuccessful.[[115]](#footnote-115) The Panel added that this state of legal uncertainty had rendered the complainant’s rights precarious and thus found that there had been an interference with his right to the peaceful enjoyment of his possessions.[[116]](#footnote-116)

### 3.9.6 Refusal to obey court order can constitute interference with the right to property

A refusal to obey a court order affecting the enjoyment of property could also constitute an interference with the right to property.[[117]](#footnote-117) Similarly, the Panel has said that the delay in the registration of a legal situation concerning land property established by domestic courts has been considered as an interference with the right to peaceful enjoyment of possessions if it causes a state of uncertainty as to the realization of property rights.[[118]](#footnote-118)

## 3.10 Non-exhaustive list of protected rights

The Panel has not drawn up any exhaustive or definite list of the rights relevant to its jurisdiction. As a matter of principle, the Panel could in principle be competent to deal with allegations of violations of any right arising from one of the instruments relevant to its competence, *ratione materiae*. For instance, in *Radoncic*, the Panel dealt with the issue and right of presumption of innocence.[[119]](#footnote-119) In *I against EULEX*, the Panel dealt with the question of corruption as an interference with the fundamental rights of citizens.[[120]](#footnote-120) The Panel held in that case that “in certain situations corruption may indeed amount to or involve a threat to the effective enjoyment of human rights. The Panel emphasizes that corruption, in so far as it undermines the rule of law and the confidence of citizens in the effectiveness of the legal system, may constitute an obstacle to the effective realization and enjoyment of human rights”.[[121]](#footnote-121) The Panel did “not exclude that corrupt behaviour of a public official could confer victim status on an individual whose human rights are affected by such conduct. However, for this to be the case, it would be necessary to establish a link between the alleged corrupt conduct and the detrimental consequences for that individual’s human rights”.[[122]](#footnote-122) No such link was established in the case in question.

1. See, e.g., *Zhydi against EULEX*, 17 October 2017, par 12; *Ramadan Hamza*, 13 June 2017, par 4; *Rajovic against EULEX*, Inadmissibility Decision, 9 April 2014, par 13; *I against EULEX*, Inadmissibility Decision, 27 November 2013, par 10. [↑](#footnote-ref-1)
2. *Ibid*. [↑](#footnote-ref-2)
3. *H & G against EULEX*, 30 September 2013, para. 44. [↑](#footnote-ref-3)
4. *Zahiti against EULEX*, 2012-14, 4 February 2014, para. 64. [↑](#footnote-ref-4)
5. See e.g. *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 30 September 2015, para. 72; see also *L.O. against EULEX*, 2014-32, 11 November 2015, para. 42*;* compare also HRAP opinion in cases nos 248/09, 250/09 and 251/09, 25 April 2013, para. 35; *Sadiku-Syla against EULEX*, 2014-34, 19 October 2016, para. 30; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., and I.R. against EULEX,* 2014-11 to 2014-17, 19 October 2016, para. 56. [↑](#footnote-ref-5)
6. See e.g. *H & G against EULEX*, 30 September 2013, para. 41. [↑](#footnote-ref-6)
7. *Zahiti against EULEX*, 4 February 2014, para. 64. [↑](#footnote-ref-7)
8. *H & G against EULEX*, 30 September 2013, para. 53. See also *A,B,C,D against EULEX* 20 June 2013, paras. 59-61. [↑](#footnote-ref-8)
9. *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., and I.R. against EULEX*, 2014-11 to 2014-17, 19 October 2016, para. 58 and its references to paras. 9, 10 and 49 in the same decision, and to *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 30 September 2015, para. 75; *L.O. against EULEX*, 2014-32, 11 November 2015, paras. 46-47. See also *Sadiku-Syla against EULEX*, 2014-3419 October 2016, para. 32; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., and I.R. against EULEX*, 2014-11 to 2014-17, 19 October 2016, para. 64. [↑](#footnote-ref-9)
10. See, e.g., *Thaqi against EULEX*, 14 September 2011, par 68 (“Having regard to its fundamental character, Article 2 of the Convention imposes also a procedural obligation on the authorities to carry out an effective investigation into alleged breaches of the substantive limb of these provisions (see, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 298, 24 March 2011).”). see also Y against EULEX, 15 November 2012, par 37 (“The Panel reiterates that the first sentence of Article 2 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).”). [↑](#footnote-ref-10)
11. See, generally, *L.O. against EULEX*, 11 November 2015, pars 58 *et seq*; *Thaqi against EULEX*, 14 September 2011, pars 68-70. [↑](#footnote-ref-11)
12. *Thaqi against EULEX*, 14 September 2011, par 70. [↑](#footnote-ref-12)
13. *Thaqi against EULEX*, 14 September 2011, par 69, referring to: see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I; *Vo v. France* [GC], no. 53924/00, § 89, ECHR 2004-VIII; and *Šilih v. Slovenia* [GC], no. 71463/01, § 192, 9 April 2009; *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007. [↑](#footnote-ref-13)
14. *Thaqi against EULEX*, 14 September 2011, par 69, referring to: *Zavoloka v. Latvia*, no. 58447/00, § 34, 7 July 2009. [↑](#footnote-ref-14)
15. See *W against EULEX*, 5 October 2012, par 30. [↑](#footnote-ref-15)
16. Torture is also now recognized as a crime under customary international law and comes within the jurisdiction of various international criminal tribunals, including the International Criminal Court. [↑](#footnote-ref-16)
17. *W against EULEX*, 10 April 2013, par 36; *Krasniqi against EULEX*, 30 August 2013, par 11 (“In any event, concerning the substance of the complaint, the Panel notes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see, among many other authorities, *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 162, or, *Iwańczuk v. Poland*, no. 25196/94, § 50, 15 November 2001).”); *Halili against EULEX*, 15 January 2013, par 27 (“In any event, the Panel further observes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (ECHR, Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 162, or, among many other authorities, *Iwańczuk v. Poland*, no. 25196/94, § 50, 15 November 2001).”). [↑](#footnote-ref-17)
18. *W against EULEX*, 10 April 2013, par 37 (“Whilst the complainant was unable to provide concrete evidence of actual harm being done or threats being made against him or his family, the risk that this could occur demonstrate that EULEX should take prompt and effective steps to ensure that such a risk does not materialise.”) [↑](#footnote-ref-18)
19. *Krasniqi against EULEX*, 30 August 2013, pars 12-13:

    “12.The complainant submits that he has been held in one cell with persons detained on remand. He fails to demonstrate how this would amount to the sort of ill-treatment foreseen in Article 3. As regards the alleged loss of the complainant’s personal belongings, the Panel is of a view that, although this could arguably have caused the complainant some distress, this incident cannot be said to have caused suffering which would amount to inhuman or degrading treatment or torture. Furthermore, the Panel has no information that this was done intentionally nor that the authorities, if seized of the matter, failed to act diligently and in timely fashion in addressing this matter.

    13.The Panel considers therefore that the complainant has not provided any evidence which would allow it to conclude that the treatment he complains of could constitute inhuman or degrading treatment or torture within the meaning of Article 3 of the European Convention. Based on the information available to the Panel, the complaints are therefore unfounded.” [↑](#footnote-ref-19)
20. *Krasniqi against EULEX*, 30 August 2013, par 11, referring to: see, e.g., *El Masri v The Former Republic of Macedonia* [GC], no. 39630/09, § 197, and authorities cited therein. [↑](#footnote-ref-20)
21. *Halili against EULEX*, 15 January 2013, par 27. [↑](#footnote-ref-21)
22. *Halili against EULEX*, 15 January 2013, par 28. [↑](#footnote-ref-22)
23. *Y against EULEX*, 15 November 2012, par 43, referring to: *X v. Ireland*, no. 6040/73, European Commission of Human Rights, decision of 20 July 1973. [↑](#footnote-ref-23)
24. *Y against EULEX*, 15 November 2012, par 43, referring to: see, e.g. *East African Asians v UK,* no. 4626/70 et al., Commission’s report of 14 December 1973, Decisions and Reports 78; *X v. UK*, no. 5877/72, European Commission of Human Rights decision of 12 October 1973. [↑](#footnote-ref-24)
25. See, e.g., *Z against EULEX*, 10 April 2013; *Martinovic against EULEX*, 23 November 2011, pars 15-16. [↑](#footnote-ref-25)
26. See above. See also, for illustrations, [*Halili against EULEX*](http://www.hrrp.eu/docs/decisions/Inadmissibility%20decision%202012-08.pdf), 15 January 2013, at pars 20-22; [*Dobruna against EULEX*](http://www.hrrp.eu/docs/decisions/Inadmissibility%20Decision%202012-03.pdf), 4 October 2012 at pars 11-12; [*Rexhepi against EULEX*](http://www.hrrp.eu/docs/decisions/Inadmissibility%20Decision%202011-23.pdf),  20 March 2012 at pars 37-38.  [↑](#footnote-ref-26)
27. *Maksutaj against EULEX*, 12 November 2015, par 57, referring to: Stogmuller v Austria A 9 (1969) p.40; 1 EHHR 155, 191). [↑](#footnote-ref-27)
28. *Maksutaj against EULEX*, 12 November 2015, par 57, referring to: Stogmuller v Austria A 9 (1969) p.40; 1 EHHR 155, 191. Cf, Wemhoff v FRG A 7 (1968); 1 EHRR 55. [↑](#footnote-ref-28)
29. *Maksutaj against EULEX*, 12 November 2015, par 58, referring to: Konig v FRG A 27 (1978); 2 EHRR 170 PC and Pedersen and Baadsgaard v Denmark 2004-XI; 42 EHHR 486 GC. [↑](#footnote-ref-29)
30. *Maksutaj against EULEX*, 12 November 2015, par 63. [↑](#footnote-ref-30)
31. *Maksutaj against EULEX*, 12 November 2015, par 64, referring to: Frydlender v France 2000-VII; 31 EHHR 1152 GC. [↑](#footnote-ref-31)
32. *Maksutaj against EULEX*, 12 November 2015, par 64, referring to: Buchholz v FRG A 42 (1981); 3 EHHR 597. Eastaway v UK (2004) (company director. [↑](#footnote-ref-32)
33. Ibid. See also Djeljalj against EULEX, 8 April 2011, par 77. [↑](#footnote-ref-33)
34. *Djeljalj against EULEX*, 8 April 2011, par 77. [↑](#footnote-ref-34)
35. *Maksutaj against EULEX*, 12 November 2015, par 60 (“In examining the reasonableness of the length of time taken to resolve this case, the Panel has not considered the initial period in which UNMIK was seized with the case. It has limited its consideration to the period of time when EULEX was responsible for the investigation of that case (from January 2009 to December 2014). The Panel notes, however, that the overall duration of the process against the complainant is relevant to evaluating the urgency with which the Mission acted in resolving this case.”). [↑](#footnote-ref-35)
36. *Rastelica against EULEX*, 27 May 2014, par 11. See also *Asllani against EULEX*, 23 November 2011, pars 35-36 (referring to ECHR, *Hornsby v. Greece*, judgment of 19 March 1997, Reports 1997-II, p. 510, par 40). [↑](#footnote-ref-36)
37. *Djeljalji against EULEX*, 8 April 2011, par 61 (“The Panel reiterates the case-law of the European Court of Human Rights to the effect that the right of access to a tribunal guaranteed by Article 6 § 1 of the Convention would be illusory if the domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see, inter alia, Hornsby v. Greece, judgment of 19 March 1997, Reports 1997-II, pp. 510-11, §§ 40 et seq.).”). [↑](#footnote-ref-37)
38. See, e.g., *Djeljalji against EULEX*, 8 April 2011, pars 62, 73 and 76:

    “62. The Panel considers that even though the problems encountered by the complainant are unfortunately rather common, especially in the Mitrovicë/Mitrovica region, this does not remove the duty to fulfill the criteria set out in Article 6 of the Convention in the determination of the complainant’s civil rights and obligations.

    […]

    73. The Panel accepts the HOM’s statement that EULEX was informed about this case on 25 June 2009 when the complainant requested the EULEX prosecutor in Mitrovicë/Mitrovica to take appropriate measures in order to have the legal situation of the property clarified, if need be, by way of criminal investigation and prosecution.

    […]

    76. The Panel, while appreciating the difficult situation in the courts in Mitrovicë/Mitrovica, concludes, however, that there has been a violation of the complainant’s right of access to a court under Article 6 § 1 of the Convention and a violation of his right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 to the Convention.” [↑](#footnote-ref-38)
39. *Rudi against EULEX*, 8 June 2011, par 87, referring to: Nowicky v. Austria, no. 34983/02, § 41, 24 February 2005. [↑](#footnote-ref-39)
40. Ibid. [↑](#footnote-ref-40)
41. Ibid, par 88. [↑](#footnote-ref-41)
42. *Djeljalj against EULEX*, 8 April 2011, pars 42-43:

    “42. With regard to criminal proceedings pending before the police or public prosecutor in Prishtinë/Priština since 30 June 2008, the Panel notes that the guarantees of fair hearing enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter: Convention) do not apply to criminal proceedings in respect of the right to have third parties prosecuted or sentenced for a criminal offence (see Perez v. France [GC], no. 47287/99, §§ 57-72, ECHR 2004-I).

    43. As in the present case the complainant wished to have criminal proceedings instituted against third parties, the Panel finds the complaints with regard to these proceedings inadmissible.” [↑](#footnote-ref-42)
43. See, e.g., *Radunovic against EULEX*, 12 November 2015, par 18 (“The Panel recalls that the right of access to a court, namely the right to institute proceedings before the court, is, in principle, guaranteed by Article 6 of the Convention (see, among many other authorities, ECHR, Tolstoy Miloslavsky v UK, Series A, No 323, judgment of 13 July 1995, para. 59; Golder v. the United Kingdom, 21 February 1975, paras. 34-36, Series A no. 18; Z. and Others v. the United Kingdom [GC], no. 29392/95, paras. 91-93, ECHR 2001-V; and Kreuz v. Poland, no. 28249/95, para. 52, ECHR 2001).” [↑](#footnote-ref-43)
44. See, generally, *Ibrahimi against EULEX*, 21 April 2015, pars 25-27, in particular, par 25 (“The Panel recalls in this place that Article 6 § 1 embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6. The fair, public and expeditious characteristics of judicial proceedings are indeed of no value if such proceedings are not first initiated. And in civil matters one can scarcely conceive of the rule of law without there being a possibility of having access to the courts (see, among many other authorities, Golder v. the United Kingdom, 21 January 1975, §§ 34 in fine and 35-36, Series A no. 18; Z. and Others v. the United Kingdom [GC], no. 29392/95, §§ 91-93, ECHR 2001-V; and Kreuz v. Poland, no. 28249/95, § 52, ECHR 2001-VI).”). [↑](#footnote-ref-44)
45. *Radunovic against EULEX*, 12 November 2015, par 18. [↑](#footnote-ref-45)
46. *Ibid*. [↑](#footnote-ref-46)
47. *Radunovic against EULEX*, 12 November 2015, par 18, referring to: Tolstoy Miloslavsky v UK, Series A, No 323. [↑](#footnote-ref-47)
48. *Ibrahimi against EULEX*, 21 April 2015, par 26 (“However, this right is not absolute and may be subject to limitations. Guaranteeing to litigants an effective right of access to a court for the determination of their “civil rights and obligations”, Article 6 § 1 leaves to the authorities a free choice of the means to be used towards this end. However, the limitations applied must not restrict or reduce the access afforded to the applicant in such a way or to such an extent that the very essence of that right was impaired (see Kreuz, cited above, §§ 53-54).”). [↑](#footnote-ref-48)
49. *Radunovic against EULEX*, 12 November 2015, par 19, referring to: Stankov v. Bulgaria, no. 68490/01, para. 52. [↑](#footnote-ref-49)
50. *Radunovic against EULEX*, 12 November 2015, par 19, referring to: Kreuz v. Poland, cited above, para. 60, ECHR 2001-VI; Harrison McKee v. Hungary, no. 22840/07, para. 29, 3 June 2014. [↑](#footnote-ref-50)
51. *Radunovic against EULEX*, 12 November 2015, par 19. Regarding the factual findings of the Panel in this case, see also, ibid, pars 20-22. See also *Ibrahimi against EULEX*, 21 April 2015, pars 27-29:

    “27. The Panel notes that a requirement to provide translations of relevant documents into English may constitute a serious burden for some claimants, such as the complainant, who is an unemployed IDP and is living on modest benefit. As an aside, the provisions of Law No. 04/l- 033 were found to be incompatible with the Kosovo Constitution and Law on the Use Languages, which both provide that Albania and Serbian are official languages in Kosovo, to be used in all its institutions. Consequently, the Law was changed in a way that it complies with the constitutional demands. It would not appear that the amendments would have any bearing on the complainant’s present situation.

    28. However, the Panel notes that the decision taken by the EULEX SCSC judge does not end the proceeding. The main case is in fact pending and will be decided at a later stage. In this case, there is a difference with the Kreuz case quoted above in par. 23 in that the initiation of the proceedings before the SCSC is not dependent on the payment of a fee or translation costs, but they are only delayed. It follows that the decision not to exempt the complainant from costs of proceedings does not violate his right to access to court (see Urbanek v. Austria, no. 35123/05, §§ 55-56, 9 December 2010). Moreover, it would appear that the merits of the complainant’s appeal against the decision in question has not yet been examined.

    29. Should his appeal be unsuccessful, the complainant has the chance to bring his grievance before the SCSC trial panel. A final decision on the costs will then be taken. This decision according to Article 12 of the Law of the SCSC may be in favour of the defendant who then might not be obliged to bear the costs.

    30. This makes his complaint to the Panel premature, therefore, it holds the complaint - for the time being - as inadmissible.” [↑](#footnote-ref-51)
52. *Y against EULEX*, 19 October 2016, par 44, referring to: ECHR, *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004‑VI, *Pfeifer v. Austria*, no. 12556/03, § 35. [↑](#footnote-ref-52)
53. *Ibid*, par 45, referring to: *A. v. Norway*, no. 28070/06, § 64, 9 April 2009; *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004‑VIII. The Panel also observed that there has been a number of cases concerning statements made in a course of an investigation or judicial proceedings where the Court found that there was an interference with the applicant’s right to a private life (ibid, referring to: *Sanchez Cardenas v. Norway*, no. 12148/03, § 33, 4 October 2007; *Mikolajová v. Slovakia*, no. 4479/03, § 57, 18 January 2011). [↑](#footnote-ref-53)
54. *Stanisic against EULEX*, 11 November 2015, par 58, referring to: X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, § 22; Niemietz v. Germany judgment of 16 December 1992, Series A no. 215-B, p. 11, § 29; Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, pp. 60–61, §§ 34 and 36. See also *Krlic against EULEX*, 26 August 2014, par 24. [↑](#footnote-ref-54)
55. *Krlic against EULEX*, 26 August 2014, par 25. [↑](#footnote-ref-55)
56. *Krlic against EULEX*, 26 August 2014, pars 27-29. See also H & G against EULEX, 30 September 2013. [↑](#footnote-ref-56)
57. See, e.g., *L.O. against EULEX*, 11 November 2015, par 60. See, in particular, the finding of the Panel in that case: “There was apparently only one direct verbal contact between the complainant and the Mission, which also appears to have reacted only when prompted to do so by the complainant. Such a record is not such as to guarantee the procedural protection guaranteed by Article 2 and 3 of the Convention. It may also be said to have negatively affected the complainant’s enjoyment of her rights under Article 8 and 13 of the Convention.” (par 60; see also, ibid, par 61). See also *A and others against EULEX*, 20 June 2013. [↑](#footnote-ref-57)
58. *Stanisic against EULEX*, 11 November 2015, par 58, referring to: Niemietz v. Germany judgment cited above, § 31. [↑](#footnote-ref-58)
59. *Stanisic against EULEX*, 11 November 2015, par 59, referring to: X and Y v. the Netherlands, 26 March 1985, §§ 22-23, Series A no. 91; Odièvre v. France [GC], no. 42326/98, § 42, ECHR 2003‑III; Hatton and Others v. the United Kingdom [GC], no. 36022/97, §§ 96- 98, ECHR 2003-VIII. In this particular case, the Panel was not satisfied that it had been shown that the Mission had failed to meet this guarantee’s requirements; ibid, par 60 (“Whilst the complainants’ Article 8 rights might have been violated by third parties, it is not been shown how EULEX’s actions or omission would have participated in such a violation. In particular, it has not been established that EULEX encouraged or remained blind to these interferences. Instead, it positively sought to investigate this matter, albeit unsuccessfully. Whilst that investigation might not have been flawless, it has not been established by the complainants that EULEX’s involvement in that investigation contributed to violating his Article 8 rights.”). [↑](#footnote-ref-59)
60. *Y against EULEX*, 19 October 2016, par 46. [↑](#footnote-ref-60)
61. *Y against EULEX*, 19 October 2016, par 48. [↑](#footnote-ref-61)
62. *W against EULEX*, 10 April 2013, par 39, referring to: *Leander v. Sweden*, judgment of 26 March 1987, par. 48. [↑](#footnote-ref-62)
63. *Ibid*, par 40, referring to: *Petra v. Romania*, judgment of 23 September 1998, Reports 1998-VII, p. 2853, par. 36. [↑](#footnote-ref-63)
64. See, *ibid*, pars 41 et seq. in particular, at paragraphs 42-43, the Panel noted this regarding the absence of a legal basis authorizing the communication of such information (to Serb authorities):

    “42.The Panel notes that by providing this statement without an apparent legal basis to Serbian authorities, EULEX Prosecutors have all but denied the complainant the procedural ability to contest their actions in local courts and to do so in such a way that he could have prevented such disclosure or obtained relevant procedural guarantees that might have assuaged some of his concerns.

    43.The inability of EULEX to identify a legal basis for its actions is worrying considering the nature of the case in question, the real and immediate risk of witnesses being interfered with in the local environment and the fact that the complainant had repeatedly objected to his statement being communicated to the Serbian authorities.” [↑](#footnote-ref-64)
65. Ibid, pars 46-51. [↑](#footnote-ref-65)
66. See, generally, *H and others against EULEX*, 30 September 2013, par 46. See also *A and others against EULEX*, 20 June 2013, pars 52-53 (“The Panel observes that by participating in the celebrations at Gazimestan the complainants sought to exercise their right to freedom of assembly and their right to freedom of conscience. While they were not prevented from participating in the event, they were subsequently victims of a violent attack by private parties against the bus in which they were travelling. As their bodily integrity was thereby threatened, the Panel will examine the complaints related thereto in the context of their right to respect for their private lives.”). [↑](#footnote-ref-66)
67. *A and others against EULEX*, 20 June 2013, par 55, referring to: mutatis mutandis, the X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, § 23).” (see, Plattform “Ärzte für das Leben” v. Austria, 21 June 1988, § 32, Series A no. 139). [↑](#footnote-ref-67)
68. *Ibid*, referring to: Plattform “Ärzte für das Leben” v. Austria, cited above, § 34; Oya Ataman v. Turkey, no. 74552/01, § 35, ECHR 2006-XIII; Ouranio Toxo and Others v. Greece, no. 74989/01, § 37, ECHR 2005-X (extracts) and Protopapa v. Turkey, no. 16084/90, § 108, 24 February 2009. [↑](#footnote-ref-68)
69. *H and others against EULEX*, 30 September 2013, pars 47 *et seq*. See also *A and others against EULEX,* 20 June 2013, par 57 (“In the present case the complainants’ bus was attacked by private parties. It has not been shown or argued that EULEX police were present at the scene of the incident complained of. However, it is precisely the absence of EULEX police at the scene and the absence of the necessary foresight which gives rise to concern. The Panel notes that EULEX provided conflicting figures regarding the number of EULEX officers who were on duty at the Vidovdan events and their whereabouts at same,”). [↑](#footnote-ref-69)
70. A and others against EULEX, 20 June 2013, par 55, referring to: Oya Ataman v. Turkey, cited above, § 39. [↑](#footnote-ref-70)
71. A and others against EULEX, 20 June 2013, par 56. [↑](#footnote-ref-71)
72. *H and others against EULEX*, 30 September 2013, pars 47 *et seq*. See also *A and others against EULEX*, 30 June 2013, pars 58-60 and finding, at par 61, that “[t]he inadequacy of resources allocated by EULEX to this operation contributed to the three complainants being denied the full and effective enjoyment of their right to respect to private life, their freedom of assembly as well as their right to exercise their religion safely and without unnecessary hindrance.” [↑](#footnote-ref-72)
73. *Ibid*, par 52. See also *A and others against EULEX*, 30 June 2013, par 64. [↑](#footnote-ref-73)
74. *Ibid*, par 53. See also *A and others against EULEX*, 30 June 2013, par 65. [↑](#footnote-ref-74)
75. See, again, *A and Others against EULEX*, 30 June 2013; *H and others against EULEX*, 30 September 2013. [↑](#footnote-ref-75)
76. [*Stanisic against EULEX*](http://www.hrrp.eu/docs/decisions/Decision%20and%20findings%202012-22%20pdf.pdf), 2012-22, 11 November 2015, par 62 (“The Panel notes that the existence of an actual breach of another substantive provision of the Convention is not a prerequisite for the application of this Article (see the Klass and Others against Germany judgment of 6 September 1978, Series A no. 28, p. 29, § 64), provided that their grievances under these provisions can be regarded as "arguable" in terms of the Convention (see, for instance, Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52, Costello-Roberts v. the United Kingdom, cited above, § 39).”). in particular, the fact that a substantive claim is declared inadmissible does not necessarily exclude the operation of that right. Ibid, par 62, referring to: I.M. v. France, no. 9152/09, § 103, 2 February 2012; Gebremedhin [Gaberamadhien] v. France, no. 25389/05, §§ 55-56, ECHR 2007-II; and M.A. v. Cyprus, , no. 41872/10, §§ 119-121, ECHR 2013; Asalya v. Turkey, no. 43875/09, § 97, 15 April 2014). [↑](#footnote-ref-76)
77. *Stanisic against EULEX*, Case No. 2012-22, 11 November 2015, par 63, referring to: Aksoy v. Turkey judgment of 18 December 1996, Reports 1996-VI, p. 2286, § 95; the Aydın v. Turkey judgment of 25 September 1997, Reports 1997-VI, pp. 1895-96, § 103. [↑](#footnote-ref-77)
78. See, e.g., in relation to an inadequate relief: *Becic Against EULEX*, Case No. 2013-03, 12 November 2014, par 58 (“While EULEX commends the actions taken by the EULEX Property Rights Coordinator, it stresses, that those do not constitute an effective remedy and do not replace a thorough assessment by EULEX prosecutors, especially as the EULEX Property Rights Coordinator has mainly a coordinating role but no executive powers.’). [↑](#footnote-ref-78)
79. *Stanisic against EULEX*, Case No. 2012-22, 11 November 2015, par 63, referring to: D.P. and J.C. v. the United Kingdom, no. 38719/97, § 135, 10 October 2002. [↑](#footnote-ref-79)
80. *Stanisic against EULEX*, Case No. 2012-22, 11 November 2015, par 63, referring to: O’Keeffe v. Ireland [GC], no. 35810/09, § 177, ECHR 2014. [↑](#footnote-ref-80)
81. *Zahiti against EULEX*, Case No. 2012-14, 4 February 2014, par 59. [↑](#footnote-ref-81)
82. Ibid, par 60, referring to: *Kudła v Poland,* no. 30210/96, judgment of 26 October 2000, par 157. [↑](#footnote-ref-82)
83. Ibid, par 62 (“The Court recognised that a right to relief would exist where the victim’s claim is ‘arguable’ (see, among many other authorities, *Silver and others v. UK*, no. 5947/72, judgment of 25 March 1983 at par. 113; *Boyle and Rice v. UK*, 27 April 1988, § 52, Series A no. 131).”). [↑](#footnote-ref-83)
84. Ibid, par 64 (“The Panel is well aware that the notion of an effective remedy when applied in the context of a mission led by an international organisation cannot be construed in the same way as in the context of a national state. However, it needs to assess, having regard to the specificity of the legal situation of EULEX in that it enjoyed immunity and cases against its officials could not be directly pursued before the Kosovo courts, whether it addressed the complainant’s situation in a manner compatible with at least the minimum procedural requirements compatible with the notion of an effective remedy.”). [↑](#footnote-ref-84)
85. *Becic Against EULEX*, Case No. 2013-03, 12 November 2014, par 59 (“The fact that the judicial mechanisms in Kosovo ultimately functioned which led to the sentencing of the usurper and the restitution of the complainants’ property does not absolve EULEX Kosovo from its own obligations, in particular, its obligation to diligently record and, in turn, duly register grievances formally brought and communicate them to the competent bodies within the mission. In the present case the failure to do so precluded a timely assessment of the case by EULEX.”). [↑](#footnote-ref-85)
86. Ibid, par 60. [↑](#footnote-ref-86)
87. *X and 115 Others Against EULEX*, Case No. 2011-20, 22 April 2015, in particular, pars 59 *et seq*, pointing to the unexplained delay and unexplained postponement of the opening of an investigation into a matter of great seriousness without valid explanation. See also *HRRP Case-Law Note the Duty to Investigate Allegations of Violations of Rights* at: <http://www.hrrp.eu/docs/Case%20law%20note%20on%20DUTY%20TO%20INVESTIGATE.pdf>. [↑](#footnote-ref-87)
88. See generally, *L.O. Against EULEX*, Case No. 2014-32, 11 November 2015. [↑](#footnote-ref-88)
89. Ibid, par 59, referring to: Varnava and Others v. Turkey [GC], quoted above, § 191; Palić v. Bosnia and Herzegovina, quoted above, § 63. [↑](#footnote-ref-89)
90. Ibid, par 60. [↑](#footnote-ref-90)
91. Ibid, par 61. [↑](#footnote-ref-91)
92. Ibid, par 62. [↑](#footnote-ref-92)
93. Ibid, par 63. [↑](#footnote-ref-93)
94. Ibid, referring to: Ahmet Özkan and Others v. Turkey, no. 21689/93, § 310, 6 April 2004; Isayeva v. Russia, no. 57950/00, § 210, 24 February 2005. [↑](#footnote-ref-94)
95. Ibid, par 65. See also, generally, A, B, C and D Against EULEX, Case No. 2012-09, 2012-10, 2012-11 and 2012-12, 20 June 2013, in particular, pars 66-67. [↑](#footnote-ref-95)
96. *L.O. Against EULEX*, Case No. 2014-32, 11 November 2015, pars 66-71 (discussing the creation, mandate and actions of the special investigative task force or SITF). [↑](#footnote-ref-96)
97. <http://www.hrrp.eu/docs/Case%20law%20note%20on%20DUTY%20TO%20INVESTIGATE.pdf>. See also *Stanisic against EULEX*, Case No. 2012-22, 11 November 2015, pars 65-70. [↑](#footnote-ref-97)
98. Ibid, in particular, pp. 22 *et seq*. See also *Stanisic against EULEX*, Case No. 2012-22, 11 November 2015, pars 67-73. [↑](#footnote-ref-98)
99. *Zahiti against EULEX*, Case No. 2012-14, 4 February 2004, par 64; and [*Zahiti v EULEX*](http://www.hrrp.eu/docs/decisions/Admissibility%20decision%202012-14%20pdf.pdf), 7 June 2013, par 40. [↑](#footnote-ref-99)
100. *Zahiti against EULEX*, Case No. 2012-14, 4 February 2004, par 66. [↑](#footnote-ref-100)
101. Ibid, par 69. [↑](#footnote-ref-101)
102. Ibid, par 72. [↑](#footnote-ref-102)
103. Ibid, par 75. [↑](#footnote-ref-103)
104. *Blerim Rudi against EULEX*, par 61, referring to: ECHR, J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom [GC], no. 44302/02, § 61, ECHR 2007-X; Maltzan and Others v. Germany (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74 c, ECHR 2005-V; Kopecký v. Slovakia [GC], no. 44912/98, § 35 c, ECHR 2004-IX). See also *Kazagic Djeljalj against EULEX*, 8 April 2011, par 63. [↑](#footnote-ref-104)
105. *Ibid*, par 62, referring to: (see, among many other authorities, ECHR, Öneryıldız v. Turkey [GC], no. 48939/99, § 124, ECHR 2004-XII; Anheuser-Busch Inc. v. Portugal [GC], no. 73049/01, § 63, ECHR 2007-I; Broniowski v. Poland [GC], no. 31443/96, § 129, ECHR 2004-V; Beyeler v. Italy [GC], no. 33202/96, § 100. ECHR 2000-I). See also *Kazagic Djeljalj against EULEX*, 8 April 2011, pars 63-64 and finding, par 65 (“In the present case, the Panel notes that according to all documentation presented by the complainant, his brother owns the property concerned. They concluded an agreement on the basis of which they together financed and built a house on the plot of land concerned. The Panel finds that in the circumstances of the case the complainant had substantive interest sufficiently concrete to confer on him rights which should be regarded as ”possessions” within the meaning of Article 1 of Protocol No. 1 of the Convention.”). [↑](#footnote-ref-105)
106. *Blerim Rudi against EULEX*, par 63, referring to: Anheuser-Busch Inc. v. Portugal, cited above, § 65; Kopecky v. Slovakia, cited above, § 50. Regarding the issue of legitimate expectation in this context, see also *Blerim Rudi against EULEX*, 8 June 2011, par 68 (“In his initial submissions the HOM acknowledged that the initiation of a judicial review did not prevent the execution of that decision. The Panel, therefore, finds that the IOB’s decision of 10 August, 2010 generates on the part of the complainant, a legitimate expectation that that decision would be executed prior to the final determination of the lawfulness of the termination of the complainant’s employment contract which will be determined by the judicial review in due course.”) [↑](#footnote-ref-106)
107. *Blerim Rudi against EULEX*, 8 June 2011, par 71, referring to: ECHR, The former King of Greece and Others v. Greece [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII. See also *Kazagic Djeljalj against EULEX*, 8 April 2011, par 63. [↑](#footnote-ref-107)
108. *Blerim Rudi against EULEX*, 8 June 2011, par 72, referring to: ECHR, among others authorities, Jahn and Others v. Germany [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005. See again *Kazagic Djeljalj against EULEX*, 8 April 2011, par 63. [↑](#footnote-ref-108)
109. *Blerim Rudi against EULEX*, 8 June 2011, par 73, referring to: see Jahn and Others v. Germany [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005-VI. [↑](#footnote-ref-109)
110. Ibid, referring to: see Sporrong and Lönnroth v. Sweden, 23 September 1982, §§ 69-74, Series A no. 52). [↑](#footnote-ref-110)
111. *Blerim Rudi against EULEX*, 8 June 2011, par 74, referring to: ECHR, Beyeler v. Italy, cited above, § 120, and Megadat.com S.r.l. v. Moldova, no. 21151/04, § 72, 8 April 2008. [↑](#footnote-ref-111)
112. Ibid, pars 75-76. [↑](#footnote-ref-112)
113. *Kazagic Djeljalj against EULEX*, 8 April 2011, par 68. [↑](#footnote-ref-113)
114. *Kazagic Djeljalj against EULEX*, 8 April 2011, par 68, referring to: Beyeler v. Italy [GC], no. 33202/96, § §§ 110 in fine, 114 and 120 in fine, ECHR 2000-I; Sovtransavto Holding v. Ukraine, no. 48553/99, §§ 97-98, ECHR 2002-VII; and Plechanow v. Poland, no. 22279/04, § 102, 7 July 2009. [↑](#footnote-ref-114)
115. *Kazagic Djeljalj against EULEX*, 8 April 2011, par 70. [↑](#footnote-ref-115)
116. Ibid, pars 71-72. [↑](#footnote-ref-116)
117. See, e.g., *Blerim Rudi against EULEX*, 8 June 2011, par 76 (“The Panel is of the view that the refusal to comply with the IOB decision amounted to an interference with the complainant’s right to the peaceful enjoyment of his possessions.). See also, *Kazagic Djeljalj against EULEX*, 8 April 2011, par 67 (“The Panel recalls the case-law of the Court to the effect that the impossibility for an applicant to obtain the execution of a final court decision in his or her favour constitutes an interference with the right to peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention (see, among many other authorities, Burdov v. Russia, no. 59498-00, § 40, ECHR 2002-III).”) [↑](#footnote-ref-117)
118. *Kazagic Djeljalj against EULEX*, 8 April 2011, par 69, referring to: Georgi Marinov v. Bulgaria, no. 36103/04. [↑](#footnote-ref-118)
119. See, generally, Y.B. against EULEX, 19 October 2016. [↑](#footnote-ref-119)
120. *I against EULEX*, 27 November 2013, pars 18-19. [↑](#footnote-ref-120)
121. Ibid, par 19. [↑](#footnote-ref-121)
122. Ibid, par 21. [↑](#footnote-ref-122)