



DECISION and FINDINGS

Date of adoption: 10 April 2013

Case No. 2011-07

W

Against

EULEX

The Human Rights Review Panel sitting on 8 and 10 April 2013 with the following members present:

Ms. Magda MIERZEWSKA, Presiding Member
Mr. Guénaël METTRAUX, Member
Ms. Katja DOMINIK, Member

Assisted by

Mr. John J. RYAN, Senior Legal Officer
Ms. Joanna MARSZALIK, Legal Officer
Mr. Florian RAZESBERGER, Legal Officer

Having considered the aforementioned complaint, introduced pursuant to Council Joint Action 2008/124/CFSP of 4 February 2008, the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel and the Rules of Procedure of the Panel as last amended on 15 January 2013,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 11 April 2011. On 25 November 2011, the Panel requested additional information from the Head of Mission (HoM) of EULEX Kosovo. The information was received on 19 January 2012.
2. On 20 March 2012, the Panel decided to give notice of the complaint to the HoM, inviting him to submit written observations on the

complaint. The observations of the HoM were received on 4 May 2012 after which they were translated and communicated to the complainant for additional observations.

3. On 16 June 2012, the complainant met with the Panel Secretariat and presented additional observations orally.
4. On 5 October 2012, the Panel declared the complaint admissible in part. The Panel found that the complaint raised serious issues of fact and law under Article 3 (freedom from torture, inhuman or degrading treatment) and Article 8 (respect for private life) of the European Convention on Human Rights (the Convention) the determination of which required an examination of the merits of the complaint. The Panel further found the complaint inadmissible under Article 2 of the Convention (right to life). The Panel invited the parties to submit any additional observations they have had on the merits of the case.
5. The Panel also decided that the following interim measures which had been adopted pursuant to Rule 22 of its Rules of Procedure should be adopted by EULEX:
 1. EULEX Prosecutors in charge of this case should be invited to request their Serbian counterparts to return copies of any document provided to them which bears the name or refers to the complainant. This would include the two statements given by the complainant to EULEX.
 2. EULEX Prosecutors in charge of the case should be invited to request their Serbian counterparts –
 - i. To destroy any copies made of the above-mentioned documents and to redact the name and any information in other documents that could identify the complainant; and
 - ii. To give notice to EULEX Prosecutors that this has been done, and
 - iii. Not to disclose to any suspect or defendant any information provided by the complainant to EULEX.
6. Observations from the HoM and complainant were received, on 17 January and 10 February 2013 respectively.
7. With a view to protecting the safety, privacy and identity of the complainant, the Panel has decided, *proprio motu*, to anonymise the name of the complainant. He will be referred to as W.

II. THE FACTS

CIRCUMSTANCES OF THE CASE

8. The facts of the case, as submitted by the parties, and as apparent from documents available to the Panel, may be summarized as follows:

Background

9. According to the complainant, he and several other villagers were witnesses to the alleged killing of 109 civilians by Serbian forces in the course of three separate incidents in the village of Lubeniq in Pejë/Peć area between May 1998 and April 1999.

Investigation by EULEX

10. The complainant and a number of other persons met with the EULEX War Crimes Investigation Unit Team Leader (hereafter EULEX investigator) for the first time in May 2010 in regard to the investigation of the above incidents. Several subsequent meetings followed, some with EULEX War Crimes Investigation Unit and others with the Kosovo Special Prosecution Office (SPRK).
11. In this context, the complainant and others gave a number of statements to EULEX investigators. The complainant provided his initial statement on 20 July 2010 and a further, expanded, statement on 27 July 2010. The statements' records do not show that the complainant was informed that his testimony and contact details could be shared with Serbian authorities.
12. During a subsequent meeting with EULEX investigators, individuals who had given statements in relation to those events were reportedly told by EULEX investigators that the investigation by EULEX would be completed shortly thereafter and that the prosecution of the case could be taken over by the Serbian authorities. The witnesses objected to such a course of action and requested that the investigation be carried out by EULEX. The Panel is not aware of the response, if any, by the EULEX investigator to these objections.
13. Throughout the investigation by EULEX investigators and prosecutors, the complainant and the other witnesses expressed their willingness to cooperate with EULEX. However, they refused to allow their statements to be sent to Serbian authorities because of concerns associated with their safety or that of their families.
14. On 30 March 2011, five individuals who had given statements to EULEX sought to withdraw their statements. In their request to that effect, they expressed mistrust of EULEX as it was alleged to be cooperating with Serbian authorities. The complainant was not listed amongst those five persons.
15. In October 2011, the same individuals who had requested the withdrawal of their statements were contacted by EULEX. They referred EULEX to the complainant. A meeting was to be held in October 2011 between EULEX and the complainant, but it did not take place. The reasons for this have not been elucidated.
16. On an unspecified date the complainant contacted the Ombudsperson Institution of Kosovo about EULEX sending his statements to the

Serbian authorities. In his request to the Ombudsperson, the complainant indicated that EULEX had initially undertaken that this case would proceed in Kosovo before being informed *post factum* that his statements had been communicated to the Serbian authorities.

Additional information received from EULEX

17. The Panel received contradictory information from EULEX regarding the nature of the investigation into this case. In the initial response received on 17 January 2012, the Panel was informed that the investigation was a "joint" investigation between EULEX and the Serbian authorities. That information was later retracted and the Panel was informed, instead, that there were two investigations (an EULEX investigation and a Serbian authority investigation) and that there was *informal* cooperation between EULEX and the Serbian authorities in relation to this case.

Complainant's testimony in Serbia

18. In his observations on the merits of the complaint the HoM informed the Panel of further developments in the case.
19. On an unspecified date, the Serbian War Crime Prosecution Office in Belgrade, Serbia requested that several persons, among them the complainant, give testimony in an investigation carried out by the Serbian authorities. On 4 September 2012, the complainant and three other witnesses, accompanied by EULEX War Crimes Investigation Unit officers travelled to Kursumlja in Serbia and gave testimonies on the alleged massacre which occurred in Lubeniq on 1 April 1999. On that basis, the HoM suggested that the complainant had effectively agreed to the content of his statement being communicated to the Serbian authorities and that there were therefore no more grounds for complaint. The HoM did not specify what protective measures, if any, were sought or granted to protect the identity and/or origin of this information in the context of their giving evidence as part of these proceedings.
20. The complainant was invited to make further submissions regarding this information and, in particular, whether he maintained his complaint against EULEX. In his further submissions of 10 February 2013, the complainant indicated that he maintained his complaint. He also appeared to suggest that his agreement to provide information in relation to individuals who were presently in custody in Serbia did not amount to a blanket – *ex post facto* – approval that his statement could be communicated to the Serbian authorities for any use or purpose.

III. COMPLAINTS

21. The complainant claims that EULEX violated his rights under the European Convention for the Protection of Human Rights and

Fundamental Freedoms (the Convention) by sending his statements, against his will and without legal basis, to the Serbian authorities. He further states that he feels threatened as his name has now been revealed to the Serbian authorities, which he does not trust.

IV. PRELIMINARY CONSIDERATIONS: FAILURE OF EULEX TO IMPLEMENT INTERIM MEASURES

22. As noted above, in its Admissibility Decision, the Panel had invited the HoM to adopt a number of interim measures pursuant to Article 22 of the Rules. In his submissions of 8 January 2013, the HoM indicated that, in EULEX's view, the interim measures would have no practical effect as any harm done by the disclosure of this information had already occurred and he declined on that basis to adopt the proposed interim measures.
23. In doing so, EULEX appears to have misunderstood the nature and gravity of the interference caused to the complainant's rights and might have underestimated the need to act urgently to prevent greater harm. As discussed further below, the prejudice caused to the complainant by the disclosure of sensitive information is real, serious and ongoing. Every copy of his statements made and distributed could find its way into the "wrong hands". The Panel's decision to invite the HoM to adopt interim measures should have provided a clear indication of the need to act promptly to avoid harm materializing. Interim measures have a protective purpose, they aim to prevent the emergence of potential human rights violations or, alternatively, address existing situations that are likely to have a negative impact on the human rights of the complainant. Based on the OPLAN and its accountability concept, which obliges the Mission to ensure that internationally recognized standards in regard of human rights are respected, the Panel has a responsibility to recommend such measures, when deemed essential. EULEX's failure to act decisively and expeditiously to reduce the risk caused to the complainant by the disclosure of this information will be taken into consideration in relation to the Panel's findings.

V. THE LAW

24. The complainant claims that his rights under the Convention have been violated because information he gave to EULEX was provided to the Serbian authorities against his will and without legal foundation. He does not allege any specific threat to himself or his family, but submits that the disclosure of that information to the Serbian authorities could create serious risks for him and his family. It follows that the complaint falls to be examined under Articles 3 and 8 of the Convention.

25. The relevant provisions of the Convention, in so far as relevant, read as follows:

Article 3 Prohibition of torture

No one shall be subjected to ... inhuman or degrading treatment...

Article 8 Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

a. Submissions by the parties

26. In his initial submissions of 4 May 2012, the HoM maintained that the disclosure of the complainant's statements to the Serbian Prosecutor's Office was not done against the will of the complainant as he had been informed about it and had not objected to it. According to the HoM, the complainant had also been informed of the possibility that the trial might be held in Serbia, since some of the suspects had already been arrested in Serbia. No written records of relevant documents on these issues were produced.
27. Further, the HoM maintained that the SPRK was cooperating with their Serbian counterparts with regard to ongoing investigations on a regular basis, in particular with regard to exchanges of information.
28. In reply to the HoM's observations, the complainant re-iterated his previous complaints. He maintained that, when giving his statement to EULEX investigators, he had not been informed that this information might be provided to the Serbian authorities and that he had continued to insist that this information should not be shared with those authorities.
29. The complainant repeated his fears for his security and that of his family. He claimed that some suspects in the case were still at large although he did not give the source of this information. He maintained that he had been assured, some time in 2010, that he and his family would receive witness protection and that no such steps had been taken in that regard. He also pointed out that even if protective measures were taken, they could not include his adult children and he was concerned for their safety as well.
30. The complainant maintained that the case should be investigated by EULEX and, subsequently, by Kosovo authorities. He stressed that he and other witnesses were still ready to cooperate with EULEX

investigators, but had objections to Serbian authorities conducting the investigation, as they did not trust them.

31. He also said that he had been in regular contact with EULEX but had, of late, been ignored by them. For instance, he had asked for a meeting with the EULEX Chief Prosecutor, but so far without success. Also, the EULEX investigator was said to have ignored the information he provided, about a witness to the massacre who was taken by Serbs to Peć hospital and, the complainant believes, murdered there. The complainant provided no documentation to corroborate that alleged event.
32. In his observations of 17 January 2013 on the merits of the case, the HoM noted that the complainant had voluntarily given a witness statement to Serbian authorities and confirmed also his previous statement. This, in the HoM's opinion, demonstrated his continued voluntary cooperation with both EULEX and Serbian authorities. The HoM further submitted that should there have been "a technical violation" of the complainant's rights, he had not suffered any demonstrable harm. Therefore, the HoM recommended that the Panel dismissed the complaints as unfounded.
33. In his reply to the HoM's observations the complainant maintained that he did not, in fact, repeat his previous statement, given to EULEX investigators before the Serbian authorities. His testimony in Kursumlja related to only one of the suspects, a certain Z.O., who is currently in detention. His initial testimony, on the other hand, incriminated several other suspects who were still at large. He again voiced his concerns about the way EULEX had handled his statements and insisted that he suffered "damage" as a result. He added that he had been aware of the risk he faced, but it could have been much reduced, if his identity had not been revealed to the Serbian authorities, whom, he stressed again, he did not trust.

b. The Panel's assessment

34. The complainant's repeated expressions of concern should have made EULEX aware of the need to handle the transfer of his information – and that of other concerned witnesses – with the necessary degree of care and precaution. Furthermore, considering the gravity of the charges and allegations in relation to which he had provided that information, it was not unreasonable for him to consider that the disclosure of that information could create a risk for his safety or that of his family. This, again, should have prompted EULEX to exercise particular caution when sharing that information with any other authority – whether Serbian or otherwise. It is significant in that context that it was not suggested in HoM's observations that a risk assessment had been conducted by EULEX before or after the communication of that information. This provides some indication that

the necessary care and diligence that was required in these circumstances was not exercised.

35. Furthermore, through his insistence that his statement should not be communicated to the Serbian authorities and absent any recorded indication that he was properly informed that this could happen, the complainant had a legitimate expectation that this would not be the case. By disclosing that information without his express approval or, at the least, without giving him a fair opportunity to challenge the Prosecutor's decision to communicate that information to the Serb authorities, EULEX Prosecutors violated this legitimate expectation. There is no recorded indication that, prior to doing so, EULEX Prosecutors had conducted an evaluation of the risks incurred by the complainant if this information was communicated nor of the need to seek guarantees from the Serbian authorities regarding the use that they could make of that statement. This, again, suggests that the care and caution that would have been appropriate in the circumstances was not exercised by EULEX Prosecutors before communicating his statement to the Serbian authorities.

Alleged violation of Article 3

36. The Panel has considered whether the conduct attributed to EULEX meets the threshold of gravity relevant to Article 3 of the Convention. (see, among other authorities, *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, ECHR 2000-X, par. 114). The Panel considers that the impugned conduct of EULEX has created a risk for the complainant and his family, which it will address further below. The Panel notes, however, that the complainant did not suggest that this risk had materialised in any way, whether through threats of harm or actual harm. In those circumstances, and absent relevant information on that point, the Panel must conclude that the actions of EULEX and their impact on the complainant do not meet the gravity threshold relevant to that provision.
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.
38. Having regard to the above, the Panel concludes that there has been no breach of Article 3 of the Convention.

Alleged violation of Article 8

39. In so far as the complainant alleges that his witness statement and personal details were disclosed to the Serbian authorities without his consent, the Panel notes that the collection and use of information by

officials about an individual without his consent may interfere with his right to respect for his private life as guaranteed under Article 8 of the Convention (see *Leander v. Sweden*, judgment of 26 March 1987, par. 48).

40. 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 (see *Petra v. Romania*, judgment of 23 September 1998, Reports 1998-VII, p. 2853, par. 36).
41. Turning first to the issue of whether EULEX’s actions were “in accordance with the law”, the Panel notes that EULEX failed to point to any legal provision based on which the information provided to the Serbian authorities was based.
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.
44. It follows from the above that the interference was not “in accordance with the law” as required by the second paragraph of Article 8 and that there has been a violation of this provision. In these circumstances, an examination of the necessity and proportionality of the course taken is not strictly speaking required. However, to the extent that it might have some bearing on the implementation of the Panel’s recommendations by EULEX, the Panel will also address, albeit briefly, the requirements of “necessity”, “proportionality” and “legitimate aim”.
45. The Panel is satisfied that co-operation with Serbian authorities pursued the legitimate aim of the prevention of disorder or crime within the meaning of par. 2 of Article 8. The investigation and prosecution of war crimes and other international crimes is unquestionably an aim which should be energetically pursued and which, in some circumstances, might warrant setting limitations to the rights guaranteed under Article 8 of the Convention.
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 of 26 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 also Council 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 complainant 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.

52. From the material in the Panel's possession it does not appear that the informed consent of the complainant was ever sought, even though it could have been done. It is not unlikely that the complainant, who repeatedly stressed his readiness to cooperate with the investigation would have eventually agreed to the disclosure of that statement should certain measures have been put in place to ensure his safety and that of his family. Yet, from the information available to the Panel, it does not appear that such a solution was ever offered to him or considered by EULEX. Nor, as already noted, is there any recorded indication that EULEX conducted a risk assessment to determine what measures might be warranted in the circumstances to protect the interests of the complainant and those of his family.
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.
54. The failure of EULEX to act upon the Panel's recommendation to adopt its suggested interim measures provides a further indication of EULEX's inability to act in accordance with the requisite best practice in matters of witness protection. Considering the serious nature of the criminal case concerned, such conduct is a cause for major concern. The Panel will invite the HoM to carefully reconsider his position in regard to this matter and to adopt without delay the measures that are recommended below.
55. Given the circumstances of the case, the Panel finds that the unconditional disclosure of the complainant's statement to the Serbian authorities amounts to a violation of his rights under Article 8 of the Convention.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY,

1. *Holds* that there has been no violation of Article 3 of the Convention;
2. *Holds* that there has been a violation of Article 8 to the Convention;
3. *Finds* it appropriate, in the light of its above findings of fact and law, to make recommendations to the HoM under Rule 34 of its Rules of Procedure; and

4. *Recommends* the following actions to be taken by the HoM:
- A declaration should be made acknowledging that the circumstances of the case amounted to a breach of the complainant's rights attributable to the acts of EULEX in the performance of its executive mandate;
 - The HoM should order that the following measures be adopted without delay, i.e.:
 1. EULEX Prosecutors in charge of this case should be invited to request their Serbian counterparts to return copies of any documents provided to them which bears the name or refers to the complainant. This would include the two statements given by the complainant to EULEX.
 2. EULEX Prosecutors in charge of the case should be invited to request their Serbian counterparts –
 - i. To destroy any copy made of the above-mentioned documents and to redact the name and any information in other documents that could identify the complainant; and
 - ii. To give notice to EULEX Prosecutors that this has been done, and
 - iii. Not to disclose to any suspect or defendant any information provided by the complainant to EULEX
 - The HoM should order an evaluation of what legal instruments are available to EULEX Prosecutors to cooperate in matters of judicial and criminal cooperation and, should available legal basis be determined to be inadequate or insufficient, to undertake the necessary steps to try to bring all necessary legal instruments into force;
 - Pending this evaluation, the HoM should instruct EULEX Prosecutors not to communicate any information provided by witnesses to any authorities – Serbian or any other – without having received an assurance from the competent investigative and prosecutorial organs of EULEX that the requisite legal basis is in place for that purpose and that EULEX Prosecutors will comply with these legal requirements in all circumstances;
 - The HoM should order the competent organs of EULEX to conduct a thorough evaluation of the risk incurred by the complainant and/or his family as a result of his statement having been provided to Serbian authorities. Once this has been done and if a risk has been identified, the Panel recommends that EULEX should discuss with the complainant any step or measure which could be taken to limit and prevent the risk of harm.
 - The HoM is invited to disseminate the present decision to relevant EULEX officials involved in the investigation and prosecution of crimes in Kosovo with a view to ensure that they are duly made

aware of their duties and responsibilities vis-à-vis witnesses from whom they obtain information.

The HOM is invited to inform the Panel of the measures he intends to undertake with regard to this decision by 31 May 2013.

Furthermore, the HOM is invited to inform the Panel and the complainant of the measures which have been taken, and about the results they have produced, by 31 August 2013, with the exception of the risk assessment referred to above, which should be initiated without delay.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member