



Human Rights Review Panel

First Annual Report

8.6. 2010 – 31.12. 2010

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Foreword:

This is the first annual report of the Human Rights Review Panel (hereafter the Panel) which covers the period from its preliminary session in the first week in May, 2010 until 31 December, 2010.

The European Union established the Panel on 29 October, 2009 with a mandate to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. It complements the overall accountability of EULEX which includes the EULEX Internal Investigation Unit and the EULEX Third Party Liability Insurance Scheme.

The creation of the Panel evolved from meetings, discussions and commentaries between the European Union, EULEX Kosovo, international organizations and institutions as well as the international community throughout 2008 and 2009 that ultimately resulted in the formulation of recommendations for the establishment of a human rights accountability mechanism for EULEX Kosovo.

The EULEX Human Rights and Gender Office played a central role in these meetings, discussions and commentaries on the creation of the Panel on behalf of the EULEX-Kosovo Mission.

The Acting Head of EULEX mission appointed the Panel Members and the substitute Member, after an open and competitive selection process, on 4 May, 2010. The Panel adopted its Rules of Procedure and became fully operational on 9 June, 2010.

Since then, the main thrust of the operations of the Panel has been focused on processing the caseload, the public information campaign, the recruitment of Secretariat's international and local staff as well as the establishment of the office and its practices, procedures and systems.

The Panel has established an independent status and a separate identity from EULEX Kosovo through, inter alia, the vigorous implementation of its outreach campaign in Kosovo and Serbia, its pro-proactive, energetic approach to its human rights operations and its informative website which it maintains from its own in-house human and technical resources.

This independent profile of the Panel has been reinforced by the fact that it has its own dedicated full time Secretariat and a high profile office building in the centre of Prishtinë/Priština which is readily accessible to the public and which is, notably, geographically and physically separate from any EULEX buildings or operations.

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Though it is still in its infancy, the Panel has become an integral part of the human rights architecture in Kosovo where it has already made a significant contribution to the promotion of accountability for human rights violations as well as the establishment of international human rights standards.

It continues to add value to the wider EULEX Kosovo mandate as it offers meaningful remedies and assistance to members of the public at large who believe that their human rights have been violated by EULEX Kosovo in the conduct of its executive mandate.

Antonio Balsamo
Presiding Member
Human Rights Review Panel

Date 31 January 2011

1. Introduction

1.1. *Establishment of the Panel*

The Human Rights Review Panel was established by the European Union on 29 October, 2009 with a mandate to review alleged violations of human rights by EULEX-Kosovo in the conduct of its executive mandate.

The Panel is an independent, external, transparent accountability body which performs its functions with impartiality and integrity. It complements the overall accountability system of EULEX which includes the EULEX Internal Investigation Unit and the EULEX Third Party Liability Insurance Scheme.

Information on actions and commentaries of the European Union and the international community that preceded the establishment of the Panel are referenced in this report. These include references to the Joint Action 2008/124/CFSP¹ on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, which was adopted by the European Council on 4 February, 2008.

The Joint Action, in its establishment of the European Union Rule of Law Mission in Kosovo, outlined the EULEX Mission Statement, inter alia, with a reference to its executive functions as follows:

“EULEX Kosovo shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police force and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices. EULEX Kosovo, in full cooperation with the European Commission Assistance Programs, shall fulfill its mandate through monitoring, mentoring and advising, while retaining certain executive functions”².

In order to fulfill the objectives of the EULEX Mission Statement, the Joint Action laid down, inter alia, its obligation to ensure that internationally recognised standards in respect of human rights were respected:

“to ensure that all its activities respect international standards concerning human rights and gender mainstreaming”³.

¹ Council Joint Action 2008/124/CFSP of 4 February, 2008 as amended by Council Joint Action 2009/445/CFSP of 9 June 2009.

² Id. Article 2 (i).

³ Id, Article 3 (i).

Prior to the decision of the European Council to establish the Panel, Human Rights Watch, Amnesty International and the Norwegian Helsinki Committee recommended in a joint press release on 10 March, 2008 that the proposed European Union mission in Kosovo ought to be subject to much greater scrutiny and accountability than its predecessor, the United Nations Mission in Kosovo, (UNMIK):

“If the EU wants to assist in building respect for human rights and the rule of law in Kosovo, it needs to lead by example. That means that its mission accepts serious independent scrutiny of its human rights record from day one”⁴.

This sentiment was reinforced by the Commissioner for Human Rights of the Council of Europe during his Special Mission to Kosovo from 23 to 27 March, 2009 when he urged EULEX Kosovo to establish an effective accountability mechanism as a matter of priority:

“The EU’s Rule of Law Mission, EULEX could also consider the advantages of setting up an independent (human rights) accountability mechanism. EULEX does have the possibility to exert some executive powers, even if they will not be used very often. There are a number of possibilities for accountability mechanisms for EULEX. One possibility is that EULEX could take on the model of the current (UNMIK) Human Rights Advisory Panel; another is that complaints could be dealt with by the Ombudsperson’s Institution. A third option is that EULEX could create its own independent mechanism”⁵.

The Commissioner elaborated on this theme as follows in a press release on 8 June, 2009:

“No one, especially an international organization, is above the law ... when international organizations exercise executive and legislative control as a surrogate state they must be bound by the same checks and balances as we require from a democratic government”⁶.

Ultimately, the European Union created its own independent accountability mechanism for the EULEX Kosovo mission by the establishment of the Panel on 29 October, 2009. The Members of the Panel were formally appointed by the Acting Head of Mission on 4 May, 2010. It adopted its Rules of Procedure and became fully operational on 9 June, 2010.

⁴ Joint media release on Kosovo, Human Rights Watch, Amnesty International and the Norwegian Helsinki Committee, Brussels, 10 March, 2008.

⁵ Report of the Council of Europe Commissioner for Human Rights Special Mission to Kosovo 23-27 March, 2009, para 80, also available at the Commissioner’s website at www.commissioner.coe.int.

⁶ Press release-450 (2009), 8 June, 2009, Office of the Commissioner for Human Rights, also available at the Commissioner’s website at www.commissioner.coe.int.

1.2. Relevant human rights instruments

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

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

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

1.3. Procedure and Practice

The Rules of Procedure contain detailed provisions on the handling of complaints as well as the deliberative processes of the Panel⁷. A brief description of the basic procedural steps is provided hereunder:

A complainant or his statutory representative may be represented before the Panel by a lawyer or other representative of their choice.

A complaint may be filed by any person other than EULEX Kosovo personnel who claims to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate.

Complaints must be filed in writing and be signed by the complainant or his representative and be submitted within six months from the date of the alleged violation.

⁷ The Rules of Procedure are appended to the present report (annex 3).

A complainant must attach documentary evidence, if any, to support the complaint, in particular, to demonstrate that the admissibility criteria have been satisfied.

The Panel informs the Head of Mission (HOM) of EULEX-Kosovo upon the registration of each complaint. Incidentally, all communications between the Panel and the EULEX-Kosovo mission are conducted through the Human Rights and Gender office of EULEX-Kosovo.

If the Panel is of the view that the case merits examination, it invites the HOM to submit written observations on the complaint, addressing points raised in detailed questions.

Upon receipt of the observations from the HOM, the Panel may invite the complainant to submit further observations in reply.

When all written observations and submissions have been received from the parties, the Panel decides if the complaint is admissible.

Panel reviews are primarily based on written submissions, but if it finds that written observations submitted by the parties do not provide a sufficient basis for its findings, the Panel may receive oral presentations.

Upon completion of its review, the Panel presents its findings, which may include non-binding recommendations for remedial action to the HOM.

A review by the Panel may not result in recommendations for the award of monetary compensation to the complainants.

Decisions and findings are notified to the complainant and to the HOM and are published on the Panel's website in the English, Albanian and Serbian languages.

2. The Panel and the Secretariat

2.1. General

The Panel is composed of two external international experts in human rights law as well as a EULEX international judge. The competitive selection procedure for the external members, drawn from an extensive list of candidates from EU Members States and other contributing countries, was conducted through a transparent and rigorous competitive recruitment process.

This exercise led to the selection and appointment of candidates of the highest calibre with demonstrated human rights expertise, in particular in the law of

the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The third member is a serving international judge with EULEX Kosovo Justice Component who is familiar with the EULEX Kosovo mission and the legal system of Kosovo. He was also selected through a competitive selection process after a request for an expression of interest among the EULEX international judges. He was proposed to the HOM for this appointment by the Head of the Justice Component of EULEX Kosovo, in consultation with the President of the Assembly of EULEX judges.

A substitute member, who is also a serving international EULEX judge, was also selected and appointed on a similar competitive basis to replace the serving EULEX Panel member in case a conflict of interest should arise in connection with his responsibilities as an international Judge with the EULEX Justice Component.

2.2. Panel members

The Acting Head of Mission, EULEX Kosovo formally appointed the panel members and the substitute member on 4 May 2010 as follows:

Mr. Antonio Balsamo, an Italian citizen, graduated with a Degree in Law from the Faculty of Jurisprudence, University of Palermo, Italy, in December, 1986. He received his specialisation Diploma in Regional and Local Government Law from the University of Palermo in 1991.

He worked as a judge at the Court of Palermo from 1995 to 2007 and dealt with many important proceedings, including the Giulio Andreotti trial, concerning the intricate relationship that existed between organized crime and public institutions. Mr. Balsamo presided over the Court that ordered the confiscation of assets valued at hundreds of millions of Euros from the Sicilian Mafia in 2002.

Mr. Balsamo is employed by the Italian Supreme Court of Cassation since 2007 and is responsible for the professional training of judges and prosecutors of the Italian Supreme Court. He is a member of the Directive Board of the Italian Association of Judges, and a director of the review “La Magistratura”. He is also a Professor of Criminal law in the postgraduate School of Specialisation for the legal profession.

Mr. Balsamo is a judicial expert in European law, human rights and international legal cooperation in criminal matters. He was also a member of the Scientific Committee of the Italian High Council of the Judiciary of the Commission for the Reform of the Italian Criminal Code and of the Regional

Scientific Committee of the International Institute of Higher Studies in Criminal Science. He also participated, as an expert consultant, in European Union projects concerning the reform of the criminal code of Bulgaria as well as the establishment of a Public Prosecutors Office to deal with organised crime and corruption in the FYROM and human trafficking in Turkey.

He edited the book “Giurisprudenza europea e processo penale italiano” on the case law of the European Court of Human Rights and its impact on the Italian criminal law procedure. He also published a book on hearsay evidence as well as several articles for specialized scientific journals and book chapters on various topics related to the protection of human rights at both national and international level.

Ms. Magda Mierzewska, a Polish citizen, graduated from the University of Gdańsk, Poland with a Magister of Law (LLM) in 1980 and passed the Polish State Examination for judicial posts in 1982. She was admitted to the Gdańsk Chamber of Legal Counsel in 1989 and received her LLM in European Union Law from the University of Leicester in 2005.

Ms. Mierzewska worked as a Lecturer in the Law Faculty, Department of International Law, University of Gdansk from 1982 to 1991. She was appointed as a case lawyer in the Secretariat of the European Commission of Human Rights, Strasbourg in 1993. She has been employed as a lawyer at the Registry of the European Court of Human Rights, Strasbourg, France since 1998. She has extensive international training experience in various substantive and procedural human rights issues.

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

Mr. Francesco Florit, an Italian citizen, graduated in Law from the University of Trieste in 1988 where he was awarded first place for his dissertation on taxation law and commercial law. He completed a one year course at the Law University of Edinburgh on the British Courts, the criminal law system and the common law system under the auspices of the European Young Lawyers

Scheme in 1998. He passed the Bar Exam in 1990 and worked as a lawyer in the labor law sector. After a further two year study period, he passed the exam to become a judge in 1992.

As a judge, he dealt initially with both criminal and civil law matters and he thereafter specialized in criminal law. He worked as an International Judge with UNTAET in East Timor in the Special Panel for Serious Crime from 2002 to 2005 where he dealt with Crimes against Humanity perpetrated by the Indonesian Army. He was seconded by the Italian Government to the EULEX Rule of Law Mission (Justice Component) in March 2008. Since the start of the Initial Operational Capability on 9 December 2008) he has worked as an International Judge at the District Court of Pristina, dealing with the most serious criminal cases.

Ms. Gabriele Gaube, a German citizen, graduated in law at Trier University, Federal Republic of Germany in 1990. Upon completion of her postgraduate studies as well as the second State Examination she was awarded her postgraduate degree in law in 1993.

She was appointed as an Administrative Court Judge to the Berlin Administrative Court in 1993 where she served until her deputation to the Berlin Ministry of Justice, Department for Education and Training/Law Examination Board, in March 1999. During her deputation she was appointed as a Presiding Administrative Court Judge in January 2003 and as an Administrative High Court Judge in December 2004.

In January 2005 she resumed her judicial tasks at the Berlin-Brandenburg Administrative High Court (court of appeal and court of last instance with regard to the legislation of the federal states of Berlin and Brandenburg,) where she was appointed Deputy Presiding Judge in January 2007.

She been on extraordinary leave of absence from the Administrative High Court and seconded by the Federal Republic of Germany to EULEX Kosovo since November, 2008. She was appointed as an international judge to the Appeals Panel of the Supreme Court for Kosovo Property Agency cases and Appeal Judge for Kosovo Property Agency Appeals respectively by the International Civilian Representative and the Head of Mission of EULEX Kosovo in January 2009. In April 2010 her appointment was extended to cover general civil proceedings as well as criminal proceedings referring to requests for the protection of legality at the Supreme Court of Kosovo.

2.3. *Presiding Member and Substitute Member*

The Panel elected Mr. Antonio Balsamo as its Presiding Member at its inaugural session on 6 May, 2010 and upon the adoption of its Rules of Procedure on 9 June 2010, the Panel became fully operational.

Ms. Gaube, the substitute Panel member, completed her assignment as a EULEX international judge on 31 December, 2010. The procedure for the selection process for a replacement substitute member was initiated in November, 2010.

2.4. *The Secretariat*

The Secretariat of the Panel consists of a Senior Legal Officer, a Legal Officer, an Administrative/Language Assistant and two Interpreter/Translators. An additional Legal Officer is in the process of recruitment.

Mr. John J. Ryan, an Irish citizen, graduated with a Bachelor of Laws, (Hons) in Law and European Studies from the University of Limerick, Ireland, and he holds a post graduate degree as a Solicitor from the Incorporated Law Society of Ireland. He practiced law as a Solicitor with Stephen MacKenzie and Co. Solicitors, Dublin, Ireland. He has served with the United Nations in Lebanon, Syria, Israel, Cambodia, Bosnia Hercegovina, Macedonia, East Timor, Nepal, Kosovo and with the European Commission in China. Prior to assuming his current responsibilities he was employed with UNMIK, inter alia, as the Administrator of Zvecan Municipality, Mitrovica Region, Head of the International Judicial Support Division, Department of Justice, Acting Deputy Legal Adviser, Office of the Special Representative of the Secretary General, UNMIK and Executive Officer, UNMIK Human Rights Advisory Panel. He was appointed as the Senior Legal Officer and Head of the Panel Secretariat in April, 2010.

Ms. Leena Leikas, a Finnish citizen, graduated with Master of Laws from the University of Turku, Finland and subsequently qualified as a judge. After two and a half years in the Law Drafting Department, Ministry of Justice, she was employed by the Unit for Human Rights Court and Conventions in the Legal Department, Ministry for Foreign Affairs, where she specialized in the international human rights questions. From November 2007 until April 2010 she worked as a case processing lawyer in the European Court of Human Rights in Strasbourg, France. She was appointed as a Legal Officer with the Panel Secretariat in May, 2010.

Ms. Shpresa Gosalci, Kosovo Albanian, a graduate of the AAB University, Prishtina, in English Language and Literature. She was employed as Interpreter (Albanian/Serbian/English) with KFOR from July 1999 to June 2000 and as

Administrative/Language Assistant in the UNMIK Police Commissioner's Press and Public Information Office from June 2000 until March 2009. She is Administrative /Language Assistant with the Panel Secretariat since July, 2010.

Ms. Katica Kovacevic, Kosovo Serbian, was previously employed as Administrative/Language Assistant (Serbian/English) in the Office of the Auditor General from May, 2003 until December, 2008 and as Language Assistant with the Privatization Agency of Kosovo from January, 2009 to November 2010. She commenced her assignment as an Interpreter/Translator with the Panel Secretariat in December, 2010.

Mr. Kushtrim Xhaferi, Kosovo Albanian, is a graduate of the University of Prishtina, Kosovo, in English Language and Literature. He previously worked as an Interpreter/Translator (Albanian/English) with Kosovo Energy Corporation from February, 2004 to January, 2009 and as a language assistant with EULEX Police Component thereafter. He is Interpreter/Translator with the Secretariat since September, 2010.

3. Activities of the Panel

3.1. Meeting with CivCom Working Group, Brussels, Belgium.

The Panel was invited to meet with the CivCom Delegate Working Group under the auspices of the Spanish Presidency of the European Union in Brussels on 7 June, 2010. The Presiding Member of the Panel introduced the Panel Members to the Working Group and briefed it on its mandate and operational activities up to that point in time. He also provided an update on the status of the draft Rules of Procedure and outlined the draft action plan for an outreach campaign.

The Working Group representatives thereafter addressed the Panel and the principal points raised were: the importance of a comprehensive public awareness campaign to clarify the mandate and role of the Panel, including its limitations; the development of strong cooperation and collaboration with human rights NGOs and civil society organizations and representatives; the creation and maintenance of good working relations with the media; clarification of the applicable human rights law and the development and promotion of a human rights culture in Kosovo.

3.2. Public outreach campaign

The Panel commenced a comprehensive public outreach campaign to raise awareness of its mandate and functions among the public at large in May, 2010. To date the campaign has included numerous meetings with NGOs and civil society organisations and representatives in Prishtinë/Priština, Pejë/Peć, Prizren, Gilan/Gnjilane and southern and northern Mitrovicë/Mitrovica regions as well as Ferizaj/Uroševac, Shtërpçë/Štrpce and Skenderaj/Srbica municipalities.

The campaign additionally included meetings at central government level with the Minister for Justice and with local government/administration officials at both regional and municipal level.

Meetings were also held with representatives of the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), the Kosovo Office of the UN High Commissioner for Human Rights (UNHCHR), the International Civilian Office (ICO), the EU Special Representative Office (EUSR) and NATO/KFOR as well as the Ombudsperson of Kosovo; with a view to making them aware of the existence, mandate and functions of the Panel as well as to elicit their support and assistance in the implementation of the public awareness campaign.

The Panel additionally conducted interviews with TV, radio, and newspaper reporters who broadcast interviews and published articles on the Panel. The campaign has also incorporated the dissemination of information leaflets and posters as well as the organisation of a human rights information seminar for NGOs and other human rights advocates in conjunction with the Kosovo Law Centre.

Of particular note, with an improved security situation, the Panel successfully launched its outreach campaign in Northern Mitrovicë/Mitrovica on 11 November 2010 and it is scheduled to commence its campaign in Serbia in the third week of January, 2011.

All those with whom the Panel interacted, in particular the NGOs, have responded in a very positive manner and participated enthusiastically in the information campaign meetings, events and seminars. An excellent working relationship has evolved between the Panel and its counterparts at all levels in this campaign and the information campaign has been very successful to date.

The Secretariat has developed a comprehensive action plan for its ongoing outreach campaign for implementation throughout 2011. This plan includes arrangements for the launch of the information campaign in Serbia during the third week in January, 2011.

3.3. Website

The Secretariat designed, developed and now maintains its own website at: www.hrrp.eu. The site contains useful information on the mandate, functions, activities and operations of the Panel as well as press releases and the current status of pending and finalised cases. It also stores information on the applicable human rights law as well as application forms and instructions for filing complainants in the English, Albanian and Serbian languages.

3.4. Caseload of the Panel

The Panel received sixteen complaints during its first seven months of operations. Upon review, six complaints were deemed to be inadmissible as they did fall within the mandate of the Panel.

Two cases were communicated to the HOM for observations and additional information was requested from the HOM in five cases before the conduct of further proceedings.

Complaints filed to date with the Panel relate essentially to Article 2, Right to Life, Article 6, Right to a Fair Hearing in a Reasonable Time and Protocol 1, Article 1, Protection of Property of the Law of the European Convention on Human Rights and Fundamental Freedoms.

3.5. Administrative/Personnel Matters

There is a serious shortage of contracted posts as distinct from seconded posts in EULEX which has presented difficulties for the Panel in the current recruitment process for an additional legal officer.

It is imperative that well qualified legal officers are recruited to ensure that the Panel can operate at maximum capacity and the provision of a contracted legal post to the Panel is essential for this purpose.

The Panel does not have a dedicated budget and is entirely dependant on the EULEX budgetary system in this regard. However, it is primarily as a result of this constant support from EULEX that the Panel became operational so quickly, that it expeditiously commenced the examination of cases and was able to adopt its first inadmissibility decisions shortly after it became operational.

Even though the Panel is entirely satisfied with the budgetary and the other categories of support so generously provided by EULEX, it would be of considerable benefit and would further enhance the independence of the Panel were it to have its own budget.

The Panel would like to take this opportunity to record its sincere appreciation in respect of the excellent cooperation, administrative support and professional assistance that it has received from EULEX Kosovo at all times and in particular, from the Human Rights and Gender Office which is the conduit through which the Panel communicates and interacts so effectively with EULEX Kosovo.

4. External views and publications on the Panel

4.1. Opinions of the Venice Commission

The European Commission for Democracy through Law (Venice Commission) observed as follows on the responsibility of international organization's, for human rights standards, in the exercise of executive authority in its Opinion in relation to the UNMIK mandate in 2004:

“when an international organization carries out executive functions that are similar to those of a state, it must not be exempted from any independent legal review, in particular, a system of independent review of conformity with international human rights standards”.

The Venice Commission adopted an Opinion on the Existing Mechanisms to Review Compatibility with Human Rights Standards of Acts by UNMIK and EULEX in Kosovo more recently on 21 December, 2010.⁸ An extract from the Opinion is attached to this report as an Annex.

The Venice Commission, in its Opinion, stated that an external contribution to the nomination procedure for the members of the Panel is imperative and that the two external members should be appointed by the HOM in consultation with the President of the European Court of Human Rights or the President of the Court of Justice of the European Union.

The Commission also noted that *“a review by the Panel may not result in recommendations in terms of compensation ... (the Commission) is of the opinion that, in principle, restitutio in integrum is the most suitable manner for the redress of human rights violations ... in some cases the most effective remedy is financial compensation which the Panel cannot recommend”.*

⁸ Opinion no. 545 / 2009 of 20 December 2010 (CDL-AD(2010)051)
[www.venice.coe.int/docs/2010/CDL-AD\(2010\)051-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)051-e.pdf)

The Commission opined, however, that in such cases it would be possible for the complainant to claim monetary compensation, at least, for material damage, under the EULEX Third Party Liability Insurance Scheme.

The Venice Commission lauded the fact that the Panel had become operational and noted that it had already commenced the review of complaints some weeks after its establishment.

It further noted that the Panel was implementing a comprehensive outreach campaign and that its decisions were promptly published on the Panel's website in the Albanian, Serbian and English languages.

The Commission went on to say that it was "*of the opinion that such (an) efficient and proactive attitude deserves to be commended and encouraged*".

4.2. OSCE publication on Remedies and Assistance for Community Members

The Organization for Security and Cooperation in Europe, (OSCE) recently published a catalogue entitled "Exercise your rights! Remedies and Assistance for Community Members"⁹. The purpose of the catalogue is to provide community members in Kosovo with information on the remedies available should they have a grievance in relation to their fundamental rights.

The catalogue provides practical guidance on which bodies and institutions to approach and how to file a complaint if one feels that one's rights have been violated. The catalogue is organized thematically with sections covering, inter alia, human rights and gender issues, returns of displaced persons, public security issues and property matters.

Each individual body and institution, including the Human Rights Review Panel is listed separately, and the catalogue provides a brief explanation on the purpose of the bodies and institutions, followed by examples of situations in which they may be able to assist an aggrieved individual. It also includes specific information on how to access contact information and on how to file a complaint.

5. Conclusion

The Panel is now firmly established within the organizational structure of the European Union as an effective mechanism for the protection and promotion of

⁹ <http://www.osce.org/kosovo/73421>

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international human rights standards in the European Union's exercise of executive authority in Common Security and Defence Policy Missions.

It thus serves as a means to ensure European Union accountability for breaches of the European Convention on Human Rights and Fundamental Freedoms as well as other international human rights instruments in its executive authority role in Kosovo.

As such, the Panel constitutes a potential model as a human rights accountability mechanism for the protection and promotion of human rights when the European Union exercises executive authority in future Common Security and Defence Policy Missions.

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

Annex 1

Staff table

Panel	
Antonio Balsamo	Presiding Panel Member
Magda Mierzevska	Panel Member
Francesco Florit	Panel Member
Gabriele Gaube	Substitute Panel Member until 31 December 2010
Secretariat	
John J. Ryan	Senior Legal Officer
Leena Leikas	Legal Officer
Shpresa Gosalci	Administrative/Language Assistant (Albanian-English)
Katica Kovacevic	Interpreter/Translator (Serbian-English)
Kushtrim Xhaveri	Interpreter/Translator (Albanian-English)

Annex 2

Case Table (31 December 2010)

Pending	10
Inadmissible	6
Violation	0
No violation	0
Registered in total	16

Annex 3 Rules of Procedure of the Human Rights Review Panel

Chapter 1. General provisions

Rule 1. Aim of the Rules of Procedure

The Rules of Procedure aim to set out the rules to be followed by the Human Rights Review Panel and those appearing before it in procedures covered by the Accountability Concept Paper dated 29 October 2009 on the establishment of the Human Rights Review Panel.

Rule 2. Definitions

For the purposes of the present rules, unless the context otherwise requires, the meaning of the following terms will be as follows:

- a. "Joint Action" means the Council of the European Union's Joint Action no. 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo;
- b. "Panel" means the Human Rights Review Panel;
- c. "Complainant" means any person, other than EULEX personnel, having submitted a complaint and alleging to be the victim of a violation of human rights by EULEX Kosovo in the conduct of EULEX Kosovo's executive mandate;
- d. "Representative" means the person who represents a complainant in the proceedings before the Panel; and
- e. "HOM" means the EULEX Head of Mission.

Chapter 2. Organisation of the Panel

Rule 3. Members of the Panel

The Panel will be composed of international members. It will be independent in the exercise of its functions.

The Panel will be composed of three members, whereof one will be a EULEX judge. The EULEX judge will have an appointed substitute.

Members of the Panel will serve to the effect that the Panel performs its functions with impartiality and integrity.

Rule 4. Selection procedure and appointment

The two Panel members, other than the EULEX judge, will be selected by way of a call for contributions.

The Panel members will be appointed by the HOM for not less than one year. In the case of the EULEX judge and his/her substitute, the HOM appoints the Panel member following consultations with the Head of the Justice Component. The Head

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of Justice Component gives his position after consultations with the President of the Assembly of EULEX judges.

Rule 5. Resignation

Resignation of a member of the Panel, or of the substitute of the EULEX judge, will be notified to the Chairperson of the Panel who will transmit it to the HOM.

Rule 6. Election of the Chairperson

The members of the Panel will designate a Panel member as the Chairperson of the Panel through an election procedure in which the substitute member will also participate. In the event of a tie, the vote will be repeated, with the exclusion of the substitute member.

Neither the EULEX judge nor his/her substitute may be designated as Chairperson. The term of office of the Chairperson will be one year. He or she may be re-elected.

Rule 7. Functions of the Chairperson

The Chairperson will direct the work of the Panel.

Rule 8. Replacement of the Chairperson

If the Chairperson is unable to carry out his or her duties, or if his or her office falls vacant, the duties of the Chairperson will be carried out by the other member who is not a EULEX judge.

Rule 9. Secretarial support

1. The Secretarial support to the Panel will be provided by the Senior Legal Officer and the staff of the Secretariat.
2. The Senior Legal Officer will, under the authority of the Panel, in particular:
 - a. Assist the Panel and its members in the fulfilment of their duties;
 - b. Be the channel for all communications concerning the Panel; and
 - c. Have custody of the archives of the Panel.

Chapter 3. Functioning of the Panel

Rule 10. Seat of the Panel

1. The seat of the Panel will be in Pristina.
2. The Panel may decide to perform its functions elsewhere in Kosovo if it so sees fit.

Rule 11. Sessions of the Panel

1. The Panel will hold its regular sessions every two months. Extraordinary sessions may be scheduled at the discretion of the Panel.

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2. Members who are prevented by illness or other serious reason from attending all or part of any session of the Panel or from fulfilling any other Panel duty will, as soon as possible, give notice thereof to the Chairperson.

Rule 12. Withdrawal

1. A member of the Panel may not take part in the work of the Panel in the consideration of any case if:

- a. He or she is in a position of conflict of interest;
- b. He or she has expressed opinions publicly, through the media, in writing, through his or her public actions or otherwise, that are objectively capable of adversely affecting his or her impartiality; or
- c. His or her independence or impartiality may legitimately be called into doubt for any other reason.

2. In the event of any doubt as to the existence of one of the grounds referred to in paragraph 1, the issue will be decided by the Panel with the exclusion of the member concerned.

Rule 13. Deliberations

1. The Panel will deliberate in private and its deliberations will remain secret. Only the Senior Legal Officer and members of the Secretariat, interpreters, and persons providing other assistance to the Panel may attend its meetings unless the Panel decides otherwise.

2. Minutes of the deliberation will be taken, recording, *inter alia*, the name and the functions of those present to the deliberation.

3. Where it is necessary for the Panel to decide on a point of procedure other than at a scheduled session of the Panel, the Chairperson may direct that the deliberations may take place through electronic means.

Rule 14. Quorum

1. The Panel may decide only if all members are present or in the case of Rule 13, paragraph three, if all members take part in the deliberations by electronic means, with the exception of the provision of paragraph 3.

2. In the case of the resignation or the withdrawal of the member who is the EULEX judge, or his or her absence in the context of Rule 11, paragraph two, the substitute member will temporarily replace him/her.

3. In the case of resignation or the withdrawal of a member different from the EULEX judge, or his or her absence in the context of Rule 11, paragraph two, the Panel can decide with two members being present or taking part in the deliberation by electronic means. In the event of a tie, the member who is not a EULEX judge will have the casting vote.

Rule 15. Voting

The decisions of the Panel will be adopted by a majority of the members taking part in the vote. Abstentions will not be allowed.

Chapter 4. Procedure

A. General rules

Rule 16. Languages

1. The official languages of the Panel will be Albanian, Serbian and English.
2. The authentic version of the decision will be in English. The English version will be translated into Albanian and Serbian.
3. Where a conflict or discrepancy arises between the English version of a document or decision and its Albanian or Serbian version, the English version shall prevail.

Rule 17. Representation of the complainants

Complainants and, as the case may be, their statutory representatives can be represented before the Panel by a lawyer or other representatives of their choice.

Rule 18. Representation of the Head of Mission.

The HOM may make a written submission or an oral presentation to the Panel or authorize a member of the Mission for that purpose.

Rule 19. Action in specific cases

1. The Panel may, of its own motion or at the request of a complainant or the Head of Mission, take any action it considers expedient or necessary for the proper performance of its duties.
2. The Panel may ask one or more of its members to take any such action in its name, and in particular, to hear experts or other persons, to examine documents or to visit any location. Such member or members will duly report to the Panel on the outcome of the action taken.

Rule 20. Joinder of complaints

The Panel may, if it considers it to be in the interest of the proper conduct of the proceedings, order the joinder of two or more complaints.

Rule 21. Order of processing of complaints

1. The Panel will deal with complaints in the order in which they become ready for examination.

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2. The Panel may decide to give precedence to a particular complaint.

Rule 22. Interim measures

1. The Panel or, where appropriate, its Chairperson may, at the request of a complainant, or at its own discretion, propose to the HOM that an interim measure it considers necessary be adopted in the interests of the proper conduct of the proceedings before it. The HOM will take a decision.

2. The Panel may request information from the complainant or other persons on any matter connected with the implementation of any interim measure decided by the HOM.

Rule 23. Time limits

Time limits for information, observations or comments requested from the complainant and the HOM will be set by the Panel.

Rule 24. Costs

There will be no financial charge arising in connection with the filing or processing of a complaint.

B. Complaints

Rule 25. Filing of complaints

1. A complaint may be filed by any person other than EULEX Kosovo personnel who claims to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate. The Panel will not review judicial proceedings before the courts in Kosovo.

2. The Panel will only examine complaints concerning alleged human rights violations that occurred after 9 December 2008 in Kosovo.

3. Complaints must be submitted to the Panel within three months from the date the Panel may receive complaints, or within six months from the date of the alleged violation, whichever is more favourable to the Complainant.

4. Complaints must be filed in writing and be signed by the Complainant.

5. Where a Complainant is represented in accordance with the provisions of Rule 17 a document certifying his/her capacity to represent the Complainant must be presented to the Panel by the representative.

Rule 26. Content of complaints

1. A complaint must set out:

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- a. The identity of the Complainant, including, as appropriate, the name, date of birth, occupation and the address of the person concerned;
 - b. The name, occupation and address of the representative, if any;
 - c. A statement of the relevant facts; and
 - d. A succinct statement of the alleged violations of the relevant human rights instruments.
2. The Complainant must attach documentary evidence, if any, to support the complaint, in particular to show that the admissibility criteria have been satisfied.
 3. The Complainant may use the standard complaint format available from the Panel.

Rule 27. Registration of complaints and information to the Head of Mission

1. The Senior Legal Officer will keep a register of the complaints in which will be entered, *inter alia*, the date of registration of the complaint and the date of the termination of the proceedings.
2. Upon registration of a complaint the Head of Mission will be informed.

Rule 28. Designation of a rapporteur

1. The Chairperson will designate a Panel member as a rapporteur, who will examine the complaint.
2. In the examination of the complaint a rapporteur:
 - a. May request the Complainant and the Head of Mission to submit, within a specified period of time, any factual information, documents or other material which is considered to be relevant; and
 - b. Will submit such reports, drafts and other documents as may assist the Panel in carrying out its functions.

C. Examination of the complaint

Rule 29. Inadmissibility decision without communication of the complaint to the Head of Mission

1. The Panel may declare a complaint inadmissible in summary proceedings if:
 - a. It is substantially the same as a matter that has already been examined by the Panel and contains no additional relevant information;
 - b. It is anonymous;
 - c. It has been filed beyond the time limits set out in Rule 25, paragraph three;
 - d. It is manifestly ill founded;
 - e. It is an abuse of the right of complaint.
2. The decision of the Panel on inadmissibility will contain a brief description of the facts of the case as well as the reasons for its decision. It will also state whether the decision was taken unanimously or by a majority vote. Rule 35 will be applied *mutatis mutandis*.

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Rule 30. Communication of the complaint to the Head of Mission. Written proceedings

1. If the procedure under Rule 29 is not applied, the Panel may decide to examine the admissibility and merits of the complaint simultaneously or separately.
2. In any case, the Panel will give notice of the complaint to the HOM, inviting EULEX Kosovo to submit written observations on the complaint and, upon receipt thereof, invite the Complainant to submit further observations.
3. The Panel may also request the Complainant to submit any factual information, documents or other material considered to be relevant.

Rule 31. Observations on inadmissibility

Any observations by EULEX Kosovo on inadmissibility of the complaint must be raised in its written observations submitted as provided by Rule 30.

Rule 32. Decision on admissibility.

After receiving the written observations by the HOM and eventual replies, the Panel may decide on the issue of the admissibility of the complaint. Rule 29 paragraph 2 will be applied *mutatis mutandis*.

Rule 33. Written and oral procedure

1. Reviews by the Panel will primarily be based on a written procedure.
2. The Panel may invite the Complainant to submit further evidence and written observations.
3. If the Panel finds that the complaint cannot be reviewed merely on the basis of written submissions but that such review also necessitates oral presentations, the Panel may receive such oral presentations.
The Chairperson will organise and direct oral presentations.
Panel members may question persons engaged in oral presentations before the Panel.

Rule 34. Presentation of the findings.

Upon completion of the review of a complaint, the Panel presents its findings to the HOM, including the Panel's decision on admissibility. Where necessary, the Panel will make non-binding recommendations for remedial action.

Rule 35. Form of the findings.

1. The findings will contain:
 - a. The names of the participating members of the Panel
 - b. The date of the decision;
 - c. A description of the Complainant and his/her representative;
 - d. An outline of the procedure followed;

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- e. A statement of the facts of the case;
- f. A summary of the submissions received;
- g. The reasons in points of law;
- h. The opinion of the Panel
- i. Where relevant, the recommendations for remedial actions.

D. Evidence

Rule 36. Evidence upon which decisions and findings are based

The Panel will base its decisions and findings only on evidence that it considers to be relevant to the complaint, including evidence it has collected on its own initiative.

Rule 37. Submission of additional evidence by the Complainant

The Complainant may submit additional evidence at any stage during the proceedings. However, the Panel may, when necessary for the proper performance of its duties, set a time limit for the submission of such evidence.

E. Signature, delivery, notification and publication of decisions and findings

Rule 38. Signature

Decisions and findings will be signed by the Chairperson and the Senior Legal Officer.

Rule 39. Delivery

Decisions and findings will be delivered in writing.

Rule 40. Notification

Decisions and findings will be notified to the Complainant and the HOM.

Rule 41. Publication

Decisions and findings will be promptly published on www.hrrp.eu in English, Albanian and Serbian, unless their publication could affect the operational effectiveness of the Mission or the security of the Mission's personnel. The HOM will decide on such cases after consultation with the Panel members.

F. Re-examination of the admissibility of a complaint, revision and rectification of errors in the findings

Rule 42. Re-examination of the admissibility of a complaint

1. In the event of the discovery of a fact, which might by its nature have a decisive influence on the admissibility of a complaint and which, when the decision on the inadmissibility was delivered, was unknown to the Panel and could not reasonably have been known to the Complainant, he/she may request the Panel, within a period of one month after the Complainant became aware of the fact, to re-examine the admissibility of the complaint.

2. The request will specify the decision on the inadmissibility concerned and it must contain the necessary information to show that the conditions laid down in paragraph 1 have been complied with. The request must be accompanied by copies of all supporting documentation.

3. The Panel may refuse the request if no reason exists that warrants its consideration.

Rule 43. Requests for revision of findings

1. In the event of the discovery of a fact, which might by its nature have a decisive influence on the findings and which, when the findings were delivered, was unknown to the Panel and could not reasonably have been known to the Complainant, he/she may request the Panel, within a period of one month after the Complainant became aware of the fact, to revise the findings.

2. The request will specify the findings of which revision is requested and it must contain the necessary information to show that the conditions laid down in paragraph 1 have been complied with. The request for revision must be accompanied by a copy of all supporting documentation.

3. The Panel may refuse the request if no reason exists that warrants its reconsideration.

4. If the Panel accedes to the request, it will communicate its decision to the Complainant and to the Head of Mission and will invite them to submit written comments within a time limit established by the Panel.

Rule 44. Rectification of errors and editorial revision

Without prejudice to Rules 42 and 43, the Panel may rectify clerical errors, errors in calculation or other obvious mistakes on its own motion or at the request of a Complainant or of the HOM. The request is to be submitted within one month of the delivery of a finding.

G. Derogation

Rule 45. Derogation in individual cases

The provisions of this chapter will not prevent the Panel from derogating from them in the consideration of a particular case, as necessary, if the proper performance of its duties so require.

Chapter 5. Final provisions

Rule 46. Matters not governed by the Rules of Procedure

Matters not governed by the present Rules of Procedure will be settled by the Panel having due regard to its functions as a Human Rights Review Panel, the principles of a fair hearing in the sense of Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the Joint Action.

Rule 47. Language versions of the Rules of Procedure

The present Rules of Procedure are adopted in English, being the authentic version. The text will be translated into Albanian and Serbian.

Amended and adopted by the Human Rights Review Panel in Pristina, Kosovo, on 9 June 2010

Members of the Panel:

Ms. Magda Mierzevska (Member)

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Mr. Antonio Balsamo (Member)

.....

Mr. Francesco Florit (Member)

.....

Ms. Gabriele Gaube (Substitute Member)

.....

Mr. John J. Ryan (Senior Legal Officer)

.....

Annex 4 The Venice Commission Opinion (an extract)

On The Existing Mechanisms To Review The Compatibility With Human Rights Standards Of Acts By UNMIK And EULEX In Kosovo

**Adopted by the Venice Commission at its 85th Plenary Session
(Venice, 17-18 December 2010)**

The Human Rights Review Panel of Eulex Kosovo

Background

1. In its opinion of 2004 on the human rights situation in Kosovo, the Venice Commission stressed that, when an international organisation carries out executive functions that are similar to those of a state, it must not be exempted from any independent legal review, in particular a system of independent review of conformity with international human rights standards.¹

2. In his report on his Special Mission to Kosovo in 2009, the Commissioner for Human Rights of the Council of Europe stated with respect to EULEX:

“The EU’s Rule of Law Mission, EULEX could also consider the advantages of setting up an independent accountability mechanism. EULEX does have the possibility to exert some executive powers, even if they will not be used very often. For the time-being complaints made against EULEX personnel are being dealt with internally. There are a number of possibilities for accountability mechanisms for EULEX. One possibility is that EULEX could take on the model of the current Human Rights Advisory Panel; another is that complaints could be dealt with by the Ombudsperson’s Institution. A third option is that EULEX could create its own independent mechanism. The Commissioner urges EULEX to establish an effective accountability mechanism as a matter of priority. Such a mechanism would have the power to investigate thoroughly any allegation of wrongdoing and would subject EULEX representatives to the scrutiny of an independent and transparent body. The International Civilian Representative could also consider the advantages of such an accountability mechanism.”²

3. As noted by the Commissioner, EULEX has certain executive functions (see para. 17 above). It has been accorded immunity against local legal and administrative procedures, which is a standard phenomenon for international and diplomatic missions. It follows that local legislation cannot be enforced against EULEX or its staff members. However, EULEX and its staff members must observe local legislation and if staff members fail to do so, their immunity might be waived and they can be prosecuted in their home country.

4. According to the EULEX paper³, accountability includes operational, internal (legal and disciplinary) and external accountability elements, applying with respect to

¹ CDL(2004)033, para. 91.

² Report of the Council of Europe Commissioner for Human Rights’ Special Mission to Kosovo 1 23 – 27 March 2009, para. 80, at: <https://wcd.coe.int/ViewDoc.jsp?id=1466279>.

³ <http://www.eulex-kosovo.eu/docs/Accountability/EULEX-Accountability-05.01.2010.pdf>

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both the people of Kosovo and the people of the European Union. External accountability comprises political accountability to the EU Member States and participating third states, accountability vis-à-vis the political authorities in Kosovo, social accountability to the people of Kosovo and financial accountability (the mission is accountable to the European Commission, that is supervising the financial aspects of the mission, and indirectly to the EU).

5. As concerns external Human Rights accountability, the EU decided to promote the establishment of a Human Rights Review Panel (HRRP) for EULEX Kosovo for complaints from any person claiming to be the victim of human rights violations by EULEX Kosovo in the conduct of its executive mandate.

Structure

6. The HRRP was established pursuant to a decision of the European Union of 20 November 2009⁴. A description of the HRRP is available on the latter's website and is as follows:

The Human Rights Review Panel (Panel)

Background

The Joint Action establishing EULEX KOSOVO as well as the CONOPS and the OPLAN of the Mission stipulated that the Mission should ensure respect for internationally recognized human rights standards. This should be done by an external accountability mechanism, the Human Rights Review Panel which complements the overall accountability of the Mission, including the Internal Investigation Unit and the Third Party Liability Insurance. Accordingly, the HRRP was established on 29 October, 2009 in accordance with the provisions of the Joint Action.

Members

On 4 May 2010 the EULEX Kosovo Acting Head of Mission, Mr. Roy Reeve, appointed the three selected members to the Panel as follows:

1. Mr Antonio Balsamo, Italian national,
2. Ms Magdalena Mierzevska, Polish national and
3. Mr Francesco Florit, Italian national, (serving EULEX Judge).

The Panel members were appointed for a one year term, renewable. In addition, a substitute member, Ms Gabriele Gaube, German national, was also appointed on 4 May, 2020. She is also a serving EULEX judge who will replace Mr Florit should a conflict of interest arise in connection with his responsibilities as a EULEX Judge.

The HRRP is supported by a permanent secretariat located in the city centre at Rrustem Statovci, No 29, Prishtina.

Mandate

The mandate of the HRRP is to review alleged human rights violations committed by EULEX in the performance of its executive mandate. The HRRP is an independent body which discharges its functions with integrity and impartiality.

⁴ The "accountability concept" of the HRRP, adopted by the Council of the European Union in November 2009, is a restricted document. Although the Venice Commission feels obliged to respect this restricted character, it is of the view that transparency and accessibility of the mechanism requires that the legal basis of the HRRP be made known to the public.

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Jurisdiction

The HRRP examines complaints relating to alleged violations that occurred since 9 December 2008 in Kosovo. Complaints must be submitted to the HRRP within three months from 9 June, 2010, when the HRRP became operational or within six months from the date of the alleged violation, whichever is the more favorable to the Complainant.

Procedure

The HRRP reviews complaints based on written information and may receive oral presentations.

Complainant

A complaint may be filed by any person, excluding EULEX personnel, claiming to be victim of a human rights violation by EULEX. The complainant may be represented before HRRP by a lawyer or other representative of his/her choice.

Complaint

The complaint must be written and signed by the complainant. It must contain all relevant information including contact details and the facts of the alleged violation with all available documentary evidence. If earlier decisions in the matter exist, these must be attached to the complaint.

Findings

The HRRP submits its findings to the Head of Mission and, where necessary, makes non-binding recommendations for remedial action. The recommendations may not result in monetary compensation. The findings and recommendations are made public.

7. The HRRP became operational on 9 June 2010. During its first session (9-11 June 2010) it adopted its rules of procedure⁵.

8. According to the data available as to 15 December 2010⁶, 16 cases had been registered, 6 of which had been declared inadmissible.

Assessment

9. The Venice Commission has limited itself to assessing the monitoring mechanism in respect of the executive functions of EULEX. It welcomes the establishment of the Panel as a mechanism for the accountability of EULEX in respect of possible human rights violations committed by it in the exercise of these functions.

10. The rapporteurs were consulted during the preparatory stages in summer 2009. The Venice Commission welcomes that several of their recommendations were taken into account in the preparation of the concept paper.

11. The HRRP appears to be generally in conformity with the recommendations which the Venice Commission had formulated in 2004 in respect of an advisory mechanism of human rights review for Kosovo. The Venice Commission wishes to stress, however, that those recommendations had been made in a context of a post-conflict emergency situation with only partly operating institutions. A different situation pertains in Kosovo today, and in this respect the Venice Commission is of

⁵ <http://www.hrrp.eu/docs/ROP.pdf>

⁶ <http://www.hrrp.eu/Statistics.php>; last visited on 20 December 2010.

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the opinion that, as long as the acts of EULEX are supportive or corrective within a generally peaceful situation, EULEX should be put under a more stringent review.

12. The Venice Commission notes that the HRRP has become operational and has already, only some weeks after its establishment, started to examine complaints; it has a website where the decisions are promptly posted in three languages and has carried out a major outreach campaign to raise awareness of its mandate and functions among the public at large. The Venice Commission is of the opinion that such efficient and proactive attitude deserves to be commended and encouraged.

13. As the panel has been set up in the meantime, there is little point in repeating all the suggestions which the rapporteurs had made in summer 2009. The Venice Commission will confine itself to pointing out the main points which in its view would deserve re-consideration.

Independence of the Panel

14. The HRRP is composed of three international persons with a demonstrated expertise in human rights; one of them is a EULEX judge. They are appointed following a competitive procedure by the Head of Mission (for the EULEX judge in consultation with the President of the Assembly of the EULEX judges). They are not in the chain of command of the Head of Mission. In order for the HRRP to also be seen in an objective sense as independent and as exercising its functions with impartiality, the Venice Commission is of the view that an external input in the nomination procedure is crucial. It is of the opinion that the two external panel members should be appointed by the head of Mission in consultation with the President of the European Court of Human Rights or the President of the Court of Justice of the European Union.

15. Panel members are currently appointed for one year. According to the information provided by the EULEX mission, their mandate may be extended “upon request by the Panel member”. The Venice Commission is of the opinion that, for the sake of objective independence, the length of the initial mandate of the panel members should be extended automatically within the limit of the mandate of EULEX.

Mandate

16. The HRRP's mandate is formulated as follows: “*to review complaints from any person, other than EULEX Kosovo personnel, claiming to be the victim of a violation of human rights by EULEX Kosovo in the conduct of EULEX Kosovo's executive mandate. The Panel will not review judicial proceedings before the courts in Kosovo.*” In the Commission's view, the mandate in respect of the justice sector is unclear; it will now be for the “case-law” of the HRRP to clarify what matters can be submitted to the panel.

Non-binding nature of the HRRP's determinations

17. The HRRP had advisory functions; its findings and recommendations are non-binding. The Head of Mission may decide not to implement a recommendation. It is

the Venice Commission's understanding that possible decisions by the Head of Mission not to implement the Panel's findings will be duly and publicly motivated. It would be preferable if this were spelled out explicitly.

HRRP's recommendations

18. The HRRP may suggest remedial action such as verification of facts, addressing the cause of the violation of human rights, concrete action to avoid similar violations in the future, improvement of the organization or conduct of activities etc.

19. It is explicitly provided that "a review by the Panel may not result in recommendations in terms of compensation". Pursuant to the Eulex accountability concept, any claims of financial compensation for alleged damage caused by EULEX Kosovo will, as a general rule, be handled through the existing insurance cover. Any claim of financial compensation should thus be addressed to the Head of Mission, who sees to it that "the claim is dealt with appropriately".

20. The Venice Commission is of the opinion that, in principle, *restitutio in integrum* is the most suitable manner of redress of human rights violations. The possibility for the HRRP to recommend remedial action removing the effects, and the causes, of the violation is therefore crucial. However, in some cases the most effective remedy is financial compensation, which instead the HRRP cannot recommend. In such cases it will be possible to claim monetary compensation, at least for the material damage, under the Third Party Liability Insurance scheme of EULEX. The Venice Commission stresses, however, that the procedure under the insurance scheme should not be unduly lengthy or complex. It notes in this respect that the Head of Mission of EULEX has committed himself to reviewing the insurance procedures to ensure that they remain effective.

Conclusion

21. The Venice Commission reiterates that it is a basic principle of the rule of law and essential for a full and effective respect for human rights that international organisations which carry out executive functions in Kosovo be subject to a monitoring mechanism of review of human rights compliance.

22. The Venice Commission welcomes the establishment in November 2007 of the UNMIK Human Rights Advisory Panel largely in line with its own recommendations of 2004. The Commission urges this Panel and UNMIK to find a solution so that the over 450 cases currently pending before the Panel may be processed before UNMIK leaves Kosovo.

23. The Venice Commission also welcomes the establishment of the EULEX Human Rights Review Panel in November 2009, and encourages this Panel to maintain its proactive attitude. The Commission nevertheless advises the Council of the European Union to reconsider some of the features of the Panel in the light of European and international standards.