



DECISION and FINDINGS

Date of adoption: 08 April 2011

Case No. 2010-01

Mr. Kazagic Djeljalj

Against

EULEX

The Human Rights Review Panel, sitting on 8 April 2011 with the following members present:

Mr. Antonio BALSAMO, presiding member
Ms. Magda MIERZEWSKA, member
Mr. Francesco FLORIT, member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Leena LEIKAS, Legal Officer

Having considered the aforementioned complaint, introduced pursuant to the 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 of 9 June 2010,

Having deliberated, decides as follows:

PROCEDURE

1. The complaint was registered on 2 September 2010. Additional information was requested from the complainant on 6 October 2010. That information was received on 19 October 2010.
2. On 8 December 2010 the Panel decided to give notice of the complaint to the Head of Mission (HOM) of EULEX Kosovo, inviting him to submit written observations on the complaint. It was also decided to examine the merits of the application at the same time as its admissibility, Rule 30 paragraphs 1 and 2 of the Rules of Procedure of the Panel (hereafter ROP), refers.

3. The observations of the HOM were received on 21 January 2011 after which they were translated and communicated to the complainant for his additional observations.
4. On 9 February 2011 the complainant submitted his additional observations, which were sent to HOM for information.

FACTS

I. CIRCUMSTANCES OF THE CASE

Background

5. On 29 February 1984 the complainant and his brother concluded a contract for a joint construction of a house in Mitrovicë/Mitrovica on a parcel of land registered in the brother's name. They agreed that, after the house was built, they would have the same rights in the land and the house, and that after registration of the land and the house in the cadastral book a division of the land would be carried out.
6. On 11 September 2002 the Municipal Cadastral Office of Mitrovicë/Mitrovica, under UNMIK Administration, issued a list of possessions, including the house, yard and private road, to M.K., one of the complainant's relatives, who is not the owner of the property in question.
7. On 24 February 2005, M.K. and Banka Ekonomike in Prishtinë/Priština (the Bank) concluded a loan agreement for 50,000 Euros (EUR). The complainant's brother was included in the loan documents as co-signatory for the loan, without his knowledge.
8. On 11 March 2005, the Municipal Court verified the mortgage agreement between the Bank and M.K. including the complainant's brother as a co-signatory for the loan.
9. On 14 March 2005, the Municipal Cadastral Office in Mitrovicë/Mitrovica approved the use of the complainant's real estate property (valued at EUR 120,000) as collateral on the said bank loan based on an application by M.K. A request for reconsideration of the decision could have been submitted within 30 days. Neither the complainant nor his brother, the co-owner of the property, was made aware of these matters at the time. M.K. does not own any part of the property in question.
10. M.K. failed to make the loan payments in time. Due to the payment failures, the full loan fell due on 1 February 2006.
11. On 3 February 2006, the Bank sent a request to the Municipal Court of Mitrovicë/Mitrovica to execute the loan agreement by authorizing the auction of the complainant's property. The defaulted loan amounted to some EUR 49,200.

12. On 9 February 2006 the Municipal Court issued a Decision on the request. The exact content of the Decision is not known.

Civil and Administrative Proceedings

13. On 19 November 2007, the Municipal Court of Mitrovicë/Mitrovica informed the complainant about the proceedings against his property in the form of request for a statement. This was the first time the complainant or his brother heard about the loan arrangements and the fact that their house was being used as collateral for another person's loan.
14. The complainant did not collect a copy of the Decision of 9 February 2006 as he would have, allegedly, had to agree to the findings in the Decision and sign for it, and he feared losing his property as a result. Instead, he claims to have gone immediately to the police and requested an investigation of the matter (see below paragraph 23).
15. On 11 December 2007, the Municipal Court received a letter from the complainant requesting that the execution of the judgment be rejected and that the use of his property as collateral for the loan be lifted.
16. On 14 December 2007, the Municipal Court lifted the execution of the decision of 9 February 2006 and established that the proposal for execution made by the Bank was to be considered as a lawsuit. No appeal was possible against the decision of 14 December 2007.
17. The Municipal Cadastral Office was informed of this decision by a letter from the President of the Municipal Court of Mitrovicë/Mitrovica on 21 December 2007. The letter explained that the brother of the complainant had not signed the agreement to register his property as collateral, and that the Municipal Court had decided to annul the execution of judgment issued on 9 February 2006.
18. As no action was taken with regard to the execution of the Court's final decision of 14 December 2007 and the complainant's property continued as collateral for the loan, the complainant, on 4 February 2008, sent a letter to the Mayor of Mitrovicë/Mitrovica. He requested that the local authorities act in accordance of the Court's decision, cease using his property as collateral and declare the ruling of 9 February 2006 to be invalid.
19. On 12 May 2008, the complainant sent, in essence, the same letter to the Director of the Directorate of Urbanization, also copying the Director of the Cadastral Office and the Mayor of the Mitrovicë/Mitrovica Municipality. He received a reply, dated 15 July 2008, from the Municipal Cadastral Office refusing his request as he did not have any legal basis for his request and he did not provide proof from the bank that the property was free from any claims. He was advised that he could appeal this decision with the Director of Administration and Personnel within 30 days from the time he

received it. A certificate of receipt was signed by the wife of M.K. on 16 July 2008 and by the complainant on 24 September 2008.

20. On 14 October 2008, within the 30 days of receipt of the decision, the complainant appealed to the Director of Administration and Personnel, as instructed, that the individuals involved be punished and that the illegal decision to use his property as collateral be annulled. As he did not receive any reply, he sent a further letter on 11 March 2009 to the Director.
21. On 19 March 2009, the complainant finally received a reply from the Directorate of Administration and Personnel. The reply stated that as he did not receive a reply to his complaint within 30 days, as he should have according to the Law on Administrative Procedure, he was now entitled to initiate administrative proceedings at the Supreme Court of Kosovo (Section 131.1 of the Administrative Procedure). He was also informed that already, since 20 June 2008, according to the Law on Local Self Government, the organ at the next level, to which to appeal, was the Cadastral Agency of Kosovo and no longer the Director of Administration and Personnel.
22. On 22 June 2009, the complainant requested the Cadastral Agency of Kosovo to annul the registration of his property as collateral.

Criminal proceedings

23. After receiving information on 19 November 2007 of the decision of 9 February 2006, the complainant claims to have gone immediately to the police and requested investigation of the issue. Statements were taken and the case was sent forward to the prosecutor. The complainant later found out that the case file had been lost/misplaced/destroyed in the court. New copies of the documents had to be taken from the police's investigation files for the prosecutor. Allegedly, the proceedings were interrupted by the riots in Mitrovicë/Mitrovica which caused the court to be closed until further notice.
24. On 30 June 2008, the complainant requested the public prosecutor in Prishtinë/Priština to take action against persons involved in the organized crime which had caused harm to him, his brother and to the bank. In addition, he requested that the original decision of Municipal Court to register his property as collateral be annulled, that the loan contract be annulled and that those responsible be punished severely.

EULEX involvement

25. On 25 June 2009, the complainant and his brother requested the EULEX prosecutor in Mitrovicë/Mitrovica to proceed with a criminal investigation and prosecution with regard to M.K. and others, to annul the Cadastral Office's decision of 14 March 2005 for registration of the property as collateral and to annul the loan contract where the complainant's brother appeared as co-signatory. The case was

registered as case number 07/09 of 25 June 2009. The complainant was told to expect a response after about four months.

26. After several failed attempts to obtain information on the status of his case, the complainant and his brother finally met with the EULEX prosecutor to whom the case had been assigned in April 2010. They were told to wait for the prosecutor to make further contact with them. However, despite repeated efforts to meet the prosecutor again, they did not obtain any further information on the progress in their case.

Pending proceedings

27. Currently, according to the complainant, there are four separate sets of proceedings pending with regard to the property in question:
 - In Mitrovicë/Mitrovica Courthouse, case number 2007-BA-528, dated 4 January 2008. Waiting for the reopening of the courthouse;
 - With the police or the public prosecutor in Prishtinë/Priština, through the economic crime investigation unit, dated 30 June 2008;
 - With Kosovo Cadastral Agency, submitted on 22 June 2009, protocol no. 03.817.09. Request for review also submitted on 7 September 2009, as instructed; and
 - With the EULEX prosecutor in Mitrovicë/Mitrovica, submitted on 25 June 2009, file number 07/09.
28. In addition, the civil proceedings that apparently remain pending in accordance with the decision of 14 December 2007, have still not been decided upon in the Municipal Court of Mitrovicë/Mitrovica.

Information on the case load of Mitrovicë/Mitrovica courts

29. The OSCE mission in Kosovo published a report in January 2011, entitled "The Mitrovicë/Mitrovica Justice System: Status update and continuing human rights concerns". The report outlined in detail the difficulties and the pending case load before the prosecutors and courts in Mitrovicë/Mitrovica.
30. The OSCE report noted that the Mitrovicë/Mitrovica court compound has been inaccessible for local judges and prosecutors since March 2008 as a result of riots and the following developments. The court compound has been administered by EULEX staff since December 2008. The local judges and prosecutors have been relocated to the premises of Vuçitër/Vushtrri municipal court where they continue to work under difficult conditions.
31. From July 2009 onwards EULEX conducted an inventory of the pending cases and prioritised some cases. According to the inventory there were 3,500 cases pending before the District Court and an

additional 5,200 before the prosecutors. The number of pending cases was 4,600 and 3,893 in the Municipal Court and before the prosecutors, respectively.

32. In order to appreciate the magnitude of the case load that is building up, it should be noted that the Municipal Court completed 46 criminal cases and 484 civil cases from February 2008 through October 2010. From December 2008 until October 2010 EULEX completed 40 criminal cases falling within the ambit of its mandate in the District Court of Mitrovicë/Mitrovica.

II. RELEVANT APPLICABLE LAW

Joint Action

33. Relevant extracts of Articles 2 and 3 of European Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (hereafter: Joint Action), read as follows:

Article 2 Mission Statement

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 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 responsibilities.

Article 3 Tasks

In order to fulfill the Mission Statement set out in Article 2, EULEX KOSOVO shall:

(a) monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities;

...

(d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities;

(e) contribute to strengthening cooperation and coordination throughout the whole judicial process, particularly in the area of organised crime;

(f) contribute to the fight against corruption, fraud and financial crime;

Law on Jurisdiction

34. The Law on Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in Kosovo (No. 03/L-053, hereafter: the Law on Jurisdiction), and more specifically its Articles 5, 7 and 8,

regulate the integration and jurisdiction of the EULEX judges and prosecutors in the judicial and prosecutorial system of Kosovo.

Article 5 Jurisdiction of EULEX judges for civil cases

5.1 EULEX judges assigned to civil proceedings will have the authority to select and take responsibility, in agreement with the President of the Assembly of the EULEX Judges and according to the modalities on case selection and allocation developed by the Assembly of the EULEX Judges, over:

....

c) any new or pending property related civil cases, including the execution procedures, falling within the jurisdiction of any court in Kosovo, if:

- (i) there is a grounded suspicion of attempts to influence the impartiality or independence of the local judiciary; or
- (ii) there is a grounded suspicion that the local judiciary is not willing or unable to properly deal with the case; or
- (iii) there is a grounded suspicion of a serious violation of the fairness of the proceeding.

Article 7 General authority of EULEX prosecutors

7.1 EULEX prosecutors will have the authority and responsibility to perform the functions of his or her office, including the authority to conduct criminal investigations and take responsibility for new and pending criminal investigations or proceedings, within the SPRK or within the prosecution offices to which he or she is assigned to by the Chief EULEX Prosecutor and according to the modalities as established by the present Law and by the Assembly of the EULEX Prosecutors.

Article 8 Competences of EULEX prosecutors in Kosovo

8.1 The EULEX prosecutors will be competent to investigate and prosecute the crimes, that fall under the exclusive competence of the SPRK in accordance with the law that establishes the SPRK, and the crimes, including the attempt and the various form of collaboration to the crimes, listed in all items of paragraph 3 of Article 3 of this law.

THE LAW

I. ADMISSIBILITY

General

35. Before considering the complaint on its merits the Panel has to decide whether to accept it for examination, taking into account the admissibility criteria set out in Rule 29 of its ROP.
36. The complaint was lodged with the Panel on 2 September 2010, thus within three months from the date when the Panel could receive complaints (8 June 2010) as set out in Rule 25 paragraph 3.
37. No observations were made by the parties with regard to the admissibility of the complaint.
38. According to Rule 25, paragraph 1, the Panel can only examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate. The executive mandate refers to certain matters pertaining to justice, police and customs. The Panel will not review judicial proceedings before the Courts of Kosovo.

Specific complaints

Criminal proceedings of January 2008

39. With regard to the criminal proceedings pending before Mitrovicë/Mitrovica Municipal/District Court since January 2008, the Panel notes that under Rule 25, paragraph 1 of its RoP the Panel reiterates that it can only examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate, referred to above.
40. The case to which the complainant refers is pending before a court in Kosovo. It has not been shown or even argued that any EULEX judge has been involved in any capacity in the complainant's case.
41. As a result, the issues raised in this part of the complaint do not fall within the ambit of the executive mandate of EULEX Kosovo. The Panel therefore finds any complaints with regard to these criminal proceedings inadmissible.

Criminal proceedings instituted on 30 June 2008

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

Proceedings before the Kosovo Cadastral Agency

44. As pointed out by HoM in his observations, the proceedings with Kosovo Cadastral Agency are of administrative nature and, therefore, they do not form part of the executive mandate of EULEX Kosovo, as required by Rule 25, paragraph 1 of the ROP. The Panel therefore finds complaints concerning these proceedings inadmissible.

Civil proceedings in Mitrovicë/ Mitrovica Municipal Court and criminal proceedings before EULEX prosecutor

45. With regard to the civil proceedings pending before Mitrovicë/ Mitrovica Municipal Court, as a result of the final decision of 14 December 2007, HOM assumed that they relate to the dispute over the verification of the mortgage agreement. He submitted that these proceeding can be said to fall within the executive mandate of EULEX.
46. With regard to the criminal proceedings pending before the EULEX prosecutor in Mitrovicë/Mitrovica since 25 June 2009 the Head of the Mission submitted that it could not be ruled out that further

investigation could lead to the conclusion that the offence of fraud (Article 261 CCK MM: FULL NAME HERE) had been committed. This could fall under the subsidiary executive competence of EULEX prosecutors.

47. Having regard thereto, the Panel finds this part of the complaint admissible.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

Complaints

48. The Panel notes that the complainant argues that the non-execution of the legally binding final decision of 14 December 2007 has violated his rights guaranteed by Article 6 of the Convention. In effect this also refers to the civil proceedings that to the Panel's knowledge have not yet been taken up for examination before the Mitrovicë/Mitrovica District Court.

49. Furthermore, he complains that there has been no progress whatsoever in the investigation instituted by EULEX prosecutor following the complainant's request to elucidate the circumstances of the case submitted in June 2009.

50. The relevant provision of the Convention read as follows:

Article 6 Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...

51. The complainant also submits that his right to the peaceful enjoyment of his possessions, guaranteed by Article 1 of Protocol No. 1 to the Convention, has been breached.

52. Article 1 of Protocol No. 1 to the Convention for its relevant parts reads as follows:

Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

...

Submissions by the parties

53. In his submissions HOM notes that in order to execute the legally binding decision of 14 December 2007, the Municipal Court of Mitrovicë/Mitrovica should conduct the civil proceedings, instituted by Banka Ekonomika with a view to selling the property concerned. In these proceedings the complainant would be able to dispute the use

of that property as collateral. These proceedings have not started as yet.

54. Furthermore, HOM concedes that, in accordance with the case-law of the European Court of Human Rights (hereinafter: "the Court"), the fact that the judgment of 14 December 2007 has still not been enforced more than three years afterwards, might have deprived the provisions of Article 6 paragraph 1 of the Convention of all useful effect.
55. With regard to the complaint under Article 1 of Protocol No. 1 to the Convention, HOM submits that while the complainant's rights over the contested property fall within the broad notion of "possessions" within the meaning of that provision, there has been no interference with his rights, in the sense of the Convention.
56. HOM argues that since the decision of 14 December 2007 only stopped the execution of the earlier decision, that of 9 February 2006. However, as it did not cease the use of the complainant's property as collateral, his right of use might have been restricted. Furthermore, as the civil proceedings in this regard have not yet started, this might lead to legal uncertainty as to the legal situation of the property.
57. However, HOM notes that EULEX was only informed about this case on 25 June 2009 when the complainant requested the EULEX prosecutor in Mitrovicë/Mitrovica to proceed with criminal investigation and prosecution and to annul the Court ruling for registration of the property as collateral as well as the loan contract.
58. The complainant made no specific comments on HOM's observations.

The Panel's assessment

General

59. The Panel notes that the present complaint is a good example of a case that has been left in legal limbo due to the non-functioning of the court system in Mitrovicë/Mitrovica. Considering the increasing backlog of the pending cases in the Mitrovicë/Mitrovica courts, it does not, unfortunately, seem likely that this case, in any of the proceedings in which the complainant is involved will be listed for examination any time soon.

Article 6 of the Convention – non-execution

60. The Panel observes that the Municipal Court's decision of 14 December 2007 is final and binding. To date, the authorities have failed to take any measures to enforce that decision in the complainant's favour, despite his repeated contacts with various authorities. The Municipal Cadastral Office regards the property in question as being encumbered with the collateral status. The civil case by which the Bank seeks that the property be auctioned is still pending before the Mitrovicë/Mitrovica Municipal Court, with no action

having been taken since December 2007. It seems that the complainant has no other means to free the property from being used as collateral under the applicable law.

61. The Panel reiterates the case-law of the European Court of Human Rights to the effect that the right of access to a tribunal guaranteed by Article 6 § 1 of the Convention would be illusory if the domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see, inter alia, *Hornsby v. Greece*, judgment of 19 March 1997, Reports 1997-II, pp. 510-11, §§ 40 et seq.).
62. The Panel considers that even though the problems encountered by the complainant are unfortunately rather common, especially in the Mitrovicë/Mitrovica region, this does not remove the duty to fulfill the criteria set out in Article 6 of the Convention in the determination of the complainant’s civil rights and obligations.

Applicability of Article 1 of Protocol 1 to the circumstances of the case

63. The Panel notes that according to the Court’s case-law, the concept of “possessions” in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is independent from the formal classification in domestic law (*Anheuser-Busch Inc. v. Portugal* [GC], § 63; *Öneryildiz v. Turkey* [GC], § 124; *Broniowski v. Poland* [GC], § 129; *Beyeler v. Italy* [GC], § 100; *Iatridis v. Greece* [GC], § 54).
64. The concept of “possessions” referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Iatridis v. Greece*, judgment cited above; *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; and *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V).
65. In the present case, the Panel notes that according to all documentation presented by the complainant, his brother owns the property concerned. They concluded an agreement on the basis of which they together financed and built a house on the plot of land concerned. The Panel finds that in the circumstances of the case the complainant had substantive interest sufficiently concrete to confer on him rights which should be regarded as “possessions” within the meaning of Article 1 of Protocol No. 1 of the Convention.

Interference

66. HOM argues that there has been no interference with the complainant's peaceful enjoyment of his possessions
67. The Panel recalls the case-law of the Court to the effect that the impossibility for an applicant to obtain the execution of a final court decision in his or her favour constitutes an interference with the right to peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention (see, among many other authorities, *Burdov v. Russia*, no. 59498-00, § 40, ECHR 2002-III).
68. Furthermore, in assessing compliance with Article 1 of Protocol No. 1, the Court makes an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". In that context, it has been stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the conduct of official authorities. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Beyeler v. Italy* [GC], no. 33202/96, § §§ 110 *in fine*, 114 and 120 *in fine*, ECHR 2000-I; *Sovtransavto Holding v. Ukraine*, no. 48553/99, §§ 97-98, ECHR 2002-VII; and *Plechanow v. Poland*, no. 22279/04, § 102, 7 July 2009).
69. Moreover, the delay in the registration of a legal situation concerning land property established by domestic courts has been considered as an interference with the right to peaceful enjoyment of possessions if it causes a state of uncertainty as to the realization of property rights (see *Georgi Marinov v. Bulgaria*, no. 36103/04).
70. The Panel disagrees with HOM's interpretation on interference in the current case. It is true that the complainant has not lost physical control of the property. However, his right to control it and peacefully enjoy it has been interfered with as a result of the following set of facts. Firstly, the property was used, unbeknownst to the complainant, as collateral to a bank loan taken out by third party. Secondly, as that party defaulted on the loan, the bank started execution proceedings. Thirdly, the judicial decision lifting the collateral status remains unexecuted as the property remains listed as collateral. Fourthly, the complainant's efforts to have this status properly registered were unsuccessful.
71. As a result, state of legal uncertainty has rendered the complainant's rights precarious.
72. There has therefore been an interference with his right to the peaceful enjoyment of his possessions.

EULEX-involvement

73. The Panel accepts the HoM's statement that EULEX was informed about this case on 25 June 2009 when the complainant requested the EULEX prosecutor in Mitrovicë/Mitrovica to take appropriate measures in order to have the legal situation of the property clarified, if need be, by way of criminal investigation and prosecution.
74. The Panel takes note of the fact that there is no obligation on the prosecutor to inform the complainant on the proper procedure with regard civil proceedings.
75. However, the Panel cannot but note that it has not been argued, let alone shown, that any steps have been taken by the EULEX prosecution services to effectively address the complainant's situation since 25 June 2009.
76. The Panel, while appreciating the difficult situation in the courts in Mitrovicë/Mitrovica, concludes, however, that there has been a violation of the complainant's right of access to a court under Article 6 § 1 of the Convention and a violation of his right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 to the Convention.
77. In addition, the Panel notes in passing that the civil proceedings with regard to the property in question have so far remained pending for over five years, since February 2006. Such length of proceedings cannot be regarded as compatible with the complainant's right to have his case heard within a reasonable time guaranteed by Article 6 § 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms applicable in Kosovo.

FOR THESE REASONS,

The Panel, by majority,

DECLARES the complaints with regard to civil proceedings in Mitrovicë/Mitrovica Municipal Court, and to criminal proceedings before the EULEX prosecutor, admissible,

FINDS that there has been a violation of Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and a violation of Article 1 of Protocol No. 1 to that Convention,

DECLARES that in the light of its above findings of fact and law it is appropriate to make recommendations to the HoM, and

RECOMMENDS THE FOLLOWING REMEDIAL ACTIONS:

The HoM should undertake all necessary measures for the removal of the state of uncertainty affecting the complainant's peaceful enjoyment of his possessions, by, in particular,

- undertaking an examination as to whether the conditions for the complainant's civil case being taken over by EULEX judges, specified in Article 5 paragraph 1 (c) (ii) or (iii) of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in Kosovo have been fulfilled;
- establishing reasons for which there seems to have been no progress in the investigation opened before the EULEX prosecutor as a result of the complainant's request of 25 June 2009;
- furthermore, examining whether in the circumstances of the complainant's case the conditions necessary for the EULEX prosecutor's subsidiary competence to arise have been met; and
- undertaking examination of what steps could be taken with the assistance or involvement of EULEX in order to ensure the definitive implementation of the judicial decision of 11 December 2007.

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 October 2011.

John J. RYAN
Senior Legal Officer

Antonio Balsamo
Presiding Member