



DECISION and FINDINGS

Date of adoption: 20 June 2013

Case No. 2012-09, 2012-10, 2012-11 and 2012-12

A, B, C and D

Against

EULEX

The Human Rights Review Panel, by way of electronic means in line with Rule 13 of its Rules of Procedure on 20 June 2013 with the following members taking part:

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

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

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

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaints A, B and C were registered on 12 July 2012 while complaint D was registered on 17 July 2012.
2. The Panel acceded to the complainants' request not to have their names disclosed based on their concerns for their safety and security.

3. On 4 December 2012, the Panel communicated the complaints to the Head of Mission (HoM) of EULEX Kosovo and invited him to submit written observations on the complaints. The Panel communicated complaints A, B, C and D collectively, without prejudice to the option to later order a formal joinder of the cases pursuant to Rule 20 of its Rules of Procedure.
4. The observations of the HoM were received on 11 March 2013 after which they were translated and communicated to the complainants for their additional observations. The complainants did not make any further submissions.
5. On 18 March 2013, the Panel invited the HoM to submit any further observations he might have on the merits of the case. The HoM provided extensive submissions on 8 April 2013.
6. On 10 April 2013, the Panel ordered the formal joinder of all four cases (A, B, C and D) pursuant to Rule 20 of its Rules of Procedure. On the same day, the Panel declared the complaints admissible and found that, in light of the parties' submissions, the complaints raised serious issues of fact and law under Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)/Article 6 of the International Covenant on Civil and Political Rights (ICCPR), Article 3 ECHR/Article 7 ICCPR, Article 5 ECHR/Article 9 ICCPR, Article 8 ECHR/Article 17 ICCPR, Article 9 ECHR/Articles 18 and 19 ICCPR, Article 10 ECHR/Article 19 ICCPR, Article 11 ECHR/Articles 21 and 22 ICCPR, Article 13 ECHR/Article 2 ICCPR, and Article 14 ECHR/Articles 26 and 27 ICCPR, the determination of which requires an examination of the merits of the complaints.
7. The Panel invited HoM to submit further observations on the merits of the case no later than 19 April 2013, later extended until 14 May. The complainants were given until 2 May 2013 to respond and comment upon any new issue raised by the HoM in his observations. No further observations were received from the complainants.
8. On 4 June 2013, the Panel received additional documentation from the HoM. Most of the information received concerned organizational and administrative aspects of EULEX's involvement in the Vidovdan celebrations on 28 June 2012. As the information provided was general in character and had no direct connection to the cases of A, B, C and D, and because of its confidential nature, the Panel decided not to share this information with the complainants. It will not rely on any aspect of that material which could affect the complainants' claims.

II. FACTS

Background information

9. Vidovdan, has long been considered as a date of special importance to ethnic Serbs and in the Balkans. It is a Serbian religious holiday, St. Vitus Day which is connected in Serbian culture to the Battle of Kosovo against the Ottoman Empire on 28 June 1389. The feast day is sacred to ethnic Serbs and is commemorated by special events which take place on Vidovdan. While there does not seem to be any official information available on the number of people who attend at those those events, estimates indicate that that several thousand persons participated in the celebrations at *Gazimestan* on 28 June 2012.

Circumstances of the case

The following facts were established on the basis of information the complainants provided to the Panel:

Complainant A

10. The complainant requested that his/her name not be made public, due to concerns for his/her security. He/she will be referred to as "A".
11. On 28 June 2012, the complainant, who works as a taxi driver, was taking a passenger to Gazimestan, where that passenger wished to attend the Vidovdan celebrations.
12. When turning into Gazimestan from the main road, A was stopped by the Kosovo Police (KP) and initially denied permission to proceed to Gazimestan. After negotiations between the passenger and KP, the complainant was allowed to continue on his journey.
13. Shortly thereafter, while approaching Gazimestan, the complainant was stopped by the Regional Operational Support Unit (ROSU), a special police unit responsible, *inter alia*, for crowd control. According to A, four or five ROSU officers were present on that occasion. They shouted at A and the passenger, insulted them and checked the complainant's identification papers, driving license and vehicle registration. It is alleged that ROSU officers asked A "which republic he was coming from". They also allegedly insulted A's mother.
14. After checking A's and the passenger's documents, ROSU officers searched the car, but did not find anything of interest. Consequently, ROSU officers instructed the complainant "to turn around the car and to disappear". According to A, EULEX police officers were present during those incidents, observed what happened and did not intervene. The complainant was unable to give an estimate of the number of EULEX police officers present at the scene.

15. The complainant stated that in order to turn the car around as ordered by the ROSU officers, he first needed to drive towards Vucitrn/Vushtri to find enough space to do so as the sides of the road were blocked by barriers. After turning the car around, and driving back towards Pristina, A was followed by a ROSU vehicle, which flashed its light signals. The complainant deduced that the ROSU officers wanted to overtake him and he consequently moved his car to the side of the road. At this point, the same ROSU officers who had accosted A earlier stopped their vehicle in front of A's vehicle and asked again for his documents. At the same time other ROSU officers assaulted the passenger in A's vehicle.
16. A claimed that three ROSU officers then took him to the back of a police van where they slapped and kicked him. According to the complainant, a fourth ROSU officer stood outside the van, purportedly to ensure that no one observed the assault. According to A, the assault lasted from 10 to 15 minutes. As a result, A obtained bruises on his head, back and stomach. He alleged that when he was leaving the van, a EULEX vehicle passed by but did not stop.
17. Thereafter, A was allowed to leave the scene with the passenger and was told by ROSU officers to take the road towards Obilić/Obiliq. Further, it is stated that A and the passenger were told that ROSU officers did not want to see their car near the area again and instructed them "to get lost because if they see [the] car again they will beat [them] again".
18. The complainant then returned to Gračanica/Graçanicë. Complainant A was at first afraid to report the incident to the police. His uncle (a medical doctor) later convinced him to go to the police and report the matter, which he did. The same day, at about 18:00, A went to a hospital for a medical examination. The complainant provided the Panel with medical records that demonstrate that there were bruises on his body, which are consistent with his account of an assault.

Complainants B and C

19. These complainants requested that their names not be made public due to their concerns for their security. They will be referred to as "B" and "C".
20. Complainants B and C state that they were on their way towards Gazimestan to attend the memorial service to mark the Serbian holiday of Vidovdan on 28 June 2012. Both complainants state that Kosovo police present at Gazimestan removed the shirts of attendees which displayed Serb symbols and emblems.
21. It is alleged that when the complainants were on the way back from Gazimestan, near the Pristina bus station, stones as well Molotov cocktails were thrown by young men at the buses in which they were travelling, breaking the windows of those buses and putting the lives

of the passengers at risk. The complainants allege that two passengers were injured in the course of the attack. Further, complainant B alleges he/she lost consciousness upon arrival in Gračanica/Gračanicë due to the stress caused by these incidents. The complainant was subsequently taken to a hospital for a medical examination. Complainant B provided a medical report of the treatment received which is consistent with his/her account of the incident.

22. It is alleged that the KP escorted the buses from Gazimestan to Gračanica/Gračanicë but failed to protect them.

Complainant D

23. The complaint was registered on 17 July 2012. The Secretariat obtained additional information from the complainant on 31 October 2012.
24. The complainant requested that his/her name not be made public due to his/her fear for his/her security. The complainant will be referred to as "D".
25. On 28 June 2012, D went to Gazimestan on a school bus which was transporting school children to the Vidovdan memorial event. D works as a bus driver and a mechanic. On the day in question, the complainant was on duty, accompanying the bus as a mechanic.
26. D stated that he saw Kosovo Albanians on the road to Gazimestan who were observing what was going on but that he/she did not notice "any provocations by them". He did however observe provocations by ROSU and alleged that ROSU officers mistreated the passengers when they dismounted the buses at Gazimestan. ROSU officers asked the drivers to open the front doors of the buses so that they could check passengers when they were exiting the buses. According to the complainant, ROSU officers "were taking off shirts with Serbian signs and threw them on the ground, wiped their boots with them and threw them into the trash". It was further stated that people were then allowed to move on with the upper part of their bodies naked or uncovered. According to D, "EULEX police was watching all this and did not respond at all". D further said that there was a large presence of EULEX police at Gazimestan at that time.
27. The complainant also said that while they were returning to Gračanica/Gračanicë after the ceremony, stones and Molotov cocktails were thrown at the buses in which they were travelling. This was said to have occurred near the TMK (UQK), close to the Victoria hotel in Pristina. It is alleged that two civilian cars arrived at the scene and stopped in front of a bus, thereby obstructing its path. D stated that "there were five young men of about 17 to 20 years of age at the scene. One of them who threw a Molotov cocktail at the bus had his face covered with a scarf".

28. All of this activity was allegedly witnessed by three KP officers who were standing a few meters away from the scene. According to D “they were just laughing and did not intervene”. It is alleged that three young men in the bus were injured during the attack on the bus which lasted about ten minutes.
29. D provided pictures of the bus which were taken after the incident occurred. These pictures displayed smashed bus windows as well as stones on the floor of the bus. The Molotov cocktails that were said to have been thrown at the bus did not explode in the vehicles but in front of the buses on the roadway. D stated that the buses eventually managed to continue on their journey, bringing the injured men to the nearest clinic in Laplje Selo.
30. After a short stop in Laplje Selo, the bus continued to Gračanica/Gračanicë. The complainant’s bus was stopped by KP at the parking lot in Gračanica/Gračanicë, so that they could take pictures and record the damage to the bus. D stated that one of the police officers asked why the complainant did not take pictures of the incident to which D replied that it was more important for him/her to use the fire extinguisher and prevent a fire which could have caused the death of its 50 passengers, most of whom were children. D also offered to describe to the police officer some of the perpetrators whose faces were visible to him/her. According to the complainant, the police officer “just turned, waved his hand and drove away in his police vehicle”. D is not aware of any investigation of this case that may have taken place.

Facts relevant to EULEX’s investigative efforts

31. In its observations of 8 April 2013, EULEX noted a number of investigative steps taken by EULEX and/or competent Kosovo authorities with regard to some of the events that form the background to the complaints:
32. EULEX Prosecutors did not investigate events in relation to complainant A. However, EULEX Prosecutors investigated specific issues with regards to events which concerned the complaints of B, C and D.
33. EULEX stated that a mixed team of one EULEX Prosecutor and one local prosecutor opened *ex officio* a preliminary investigation against unknown persons, suspected of being involved in the commission of the following criminal offences: Light Bodily Harm in violation of Article 153, par. 2 in connection with par. 1 of the Criminal Code of Kosovo (CCK), Grievous Bodily Harm in violation of Article 154 par. 1 of the CCK, Damage to Movable Property in violation of Article 260 par. 2 in connection with par. 1 of the CCK and Causing General Danger in violation of Article 291 par. 1 of the CCK.

34. According to the information provided by EULEX, on 28 June 2012, at approximately 14:00, in Pristina, close to hotel "Victory", three school buses with Kosovo Serbs returning from Gazimestan were stoned and Molotov cocktails were thrown at them. As a result, the three buses were damaged, with some of their windows being broken, 17 persons were injured, allegedly 15 of them sustained light bodily injuries while two of them allegedly sustained grievous bodily harm.
35. According to EULEX, the crime scene investigation was carried out by KP criminal investigators and a forensic team. Despite these efforts, perpetrators could not be identified. In addition, a check of CCTV cameras around the crime scene did not produce any concrete results.
36. On 4 July 2012, the EULEX prosecutor entrusted the Police Forensic Laboratory with the examination of the bottles found at the crime scene. The assessment of the seized evidence did not yield any results that would have led to the possible identification of suspects. The same applied to the interrogation of an unidentified number of further potential witnesses.
37. On 3 August 2012, the investigators submitted a report which described all the investigative measures which had been taken. Based on this report the EULEX prosecutor concluded that it was not possible to identify any suspects involved in the incident. Accordingly, the prosecutor decided not to pursue a criminal investigation in accordance with Article 208, par. 1 of Criminal Procedure Code of Kosovo. The police and the injured parties were notified accordingly.

RELEVANT APPLICABLE LAW

Joint Action

38. 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;**
- (b) **ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities;**
- (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;
- (h) **assume other responsibilities, independently or in support of the competent Kosovo authorities, to ensure the maintenance and promotion of the rule of law, public order and security,** in consultation with the relevant Council agencies; and
- (i) **ensure that all its activities respect international standards concerning human rights and gender mainstreaming.**

Law on Jurisdiction

39. 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 7, 8 and 17 regulate the integration and jurisdiction of the EULEX judges and prosecutors in the judicial and prosecutorial system of Kosovo.

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.

Article 17

17.1 For the duration of the EULEX KOSOVO in Kosovo, the EULEX police will have the authority to exercise the powers as recognized by the applicable law to the Kosovo Police and according to the modalities as established by the Head of the EULEX KOSOVO.

III. COMPLAINTS

40. The complaints relate to two different incidents which are connected to the Vidovdan celebrations of 28 June 2012.
41. The complainants rely on a number of protected rights, including the right to life (e.g., Article 2 ECHR; Article 6 ICCPR), the right not to be subject to cruel, degrading or inhuman treatment (e.g., Article 3 ECHR; Article 7 ICCPR), the right to liberty and security (Article 5 ECHR; Article 9 ICCPR), the right to respect for private and family life (Article 8 ECHR; Articles 17/23 ICCPR), the right to freedom of thought, conscience and religion (Article 9 ECHR; Articles 18/19 ICCPR), freedom of expression (Article 10 ECHR; Article 19 ICCPR), the right to freedom of assembly and association (Article 11 ECHR; Article 21/22 ICCPR), the right to an effective remedy (Article 13 ECHR; Article 2 ICCPR), prohibition against discrimination (Article 14 ECHR; Article 26/27 ICCPR).

IV. THE LAW

42. It is for the Panel to determine the legal characterisation of the complaints to be examined. The Panel will examine the cases under the following provisions: the right to respect for private and family life (Article 8 ECHR; Article 17 ICCPR); the right to freedom of thought, conscience and religion (Article 9 ECHR; Articles 18 and 19 ICCPR); the right to freedom of assembly and association (Article 11 ECHR;

Articles 21 and 22 ICCPR) and the right to an effective remedy (Article 13 ECHR; Article 2 ICCPR).

43. Before turning to the substance of the complaints made by the applicants the Panel has to first determine the scope of its jurisdiction for the purposes of the present cases.
44. The Panel can only examine complaints relating to alleged violations of human rights by EULEX in the conduct of its executive mandate, including alleged actions by the EULEX police.
45. The Panel is of the view that the mere fact that the police operation on that day was led by and fell within the primary responsibility of Kosovo Police does not exclude the fact that EULEX may be held responsible for its own actions or failures in so far as they impacted on the exercise on the executive mandate of EULEX. The Panel will consider, in particular, whether any shortcoming attributable to EULEX in the preparation of or the carrying out the Vidovdan operation in 2012 could have violated or contributed to a violation of the human rights of the complainants.
46. In this connection, the Panel reiterates that the European Court of Human Rights has held, in the context of cases brought before it under Articles 2 (right to life] or Article 3 (prohibition of torture and inhuman or degrading treatment) of ECHR that *“the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, [...] an obligation [to protect life] must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising”* (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII). Likewise, when police forces face situations of disorder or violence capable of giving rise to unpredictable developments, impossible burden should not be imposed on them (see *Makaratzis v. Greece* [GC], no. 50385/99, § 69, ECHR 2004–XI, and *Zelilof v. Greece*, no. 17060/03, § 48, 24 May 2007). The Court further held that *“the police must be afforded a degree of discretion in taking operational decisions. Such decisions are almost always complicated and the police, who have access to information and intelligence not available to the general public, will usually be in the best position to make them”* (*P.F and E.F. v. the United Kingdom*, Application, (dec.), no. 28326/09, 23 November 2010, § 41, *mutatis mutandis*).
47. The Panel is of the view that nothing in the facts established in the present case brought to its attention by the complainants raises issues under Articles 2 or 3 of the Convention. However, bearing in mind the well established importance of the Vidovdan celebrations, the large number of people who generally participated in it, the

political and ethnic tensions to which it could give rise in the volatile security environment in Kosovo, the Panel is satisfied that EULEX knew or ought to have known prior to the Vidovdan celebrations of 2012 of the existence of a real and immediate risk of human rights violations occurring during these events (see, e.g., *P.F and E.F. v. the United Kingdom*, cited above, §. 37).

48. The Panel notes in this connection that EULEX did not dispute in its submissions either the importance of the annual Vidovdan events or that it was unaware of the security risks and threats associated with it.
49. The Panel notes the argument of EULEX that in the exercise of EULEX's responsibility as a "second responder" it would only be required to intervene if and when so requested by KP. The Panel has been unable to identify any legal basis that would restrict the obligation of EULEX to intervene as a "second responder" and that the EULEX claim that such an obligation to respond would only arise upon the request of the Kosovo authorities.

Instead, the Panel notes the clear, unambiguous language of the Joint Action Article 3 (b) which stipulates an obligation for EULEX to "ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities" (see paragraph 38 above). This approach is further supported by paragraph (h) of the same article that states that EULEX shall "assume other responsibilities, independently or in support of the competent Kosovo authorities, to ensure the maintenance and promotion of the rule of law, public order and security" (see paragraph 38 above). Further, should the EULEX argument be accepted, it would be at odds with the inherent obligations of EULEX to protect human rights as it would arguably diminish the effectiveness of this protection.

50. The Panel accepts that given the limited executive mandate of EULEX it cannot be held responsible for failing to guarantee an effective protection of human rights as such in Kosovo and that an impossible or disproportionate burden as regards policing cannot be imposed on the Mission. The Panel notes, however, that it is the obligation of EULEX under the Council Joint Action to ensure that its activities should be carried out in compliance with international standards of human rights (see Article 3 (i), Council Joint Action 2008/124/CFSP; see paragraph 38 above). EULEX would therefore be required to intervene to protect human rights wherever it knows or ought to have known at the time of a real and immediate risk that a violation might occur if it did not intervene (see, e.g., *Đorđević v. Croatia*, no. 41526/10, § 138-139, ECHR 2012 and references cited therein; *Osman v. the United Kingdom*, 28 October 1998, § 16). The nature of the response should be appropriate to the circumstances and, in turn, depend on what right or rights were at stake and on the seriousness

of the threats to those rights (see the Panel decision in *Kahrs against EULEX*, no.2012-16, § 31).

51. Accordingly, the Panel will examine whether, in the present case, EULEX actions or omissions, in so far as they affected the complainants in the context of the police operation on 28 June 2012, were consistent with the executive mandate of EULEX.
52. The Panel notes that Complainants B, C and D attended the memorial service at Gazimestan on the day in question. On their return from Gazimestan, stones as well as Molotov cocktails were thrown by young men at buses in which they were travelling, which resulted in the bus windows being smashed. Complainants B and C allege that two passengers on their bus were injured in the course of the attack. It is submitted that KP were escorting the buses but failed to protect them. Further, complainant B lost consciousness upon arrival in Gračanica/Gračanicë due to the stress caused by these alleged attacks. He/she was subsequently taken to a hospital for a medical examination.
53. The Panel observes that by participating in the celebrations at Gazimestan the complainants sought to exercise their right to freedom of assembly and their right to freedom of conscience. While they were not prevented from participating in the event, they were subsequently victims of a violent attack by private parties against the bus in which they were travelling. As their bodily integrity was thereby threatened, the Panel will examine the complaints related thereto in the context of their right to respect for their private lives.
54. The Panel first notes that the facts are not in dispute between the parties.
55. The Panel reiterates that “[a] *demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art. 11). Like Article 8 (art. 8), Article 11 (art. 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be (see, mutatis mutandis, the X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, § 23).*” (see, *Plattform “Ärzte für das Leben” v. Austria*, 21 June 1988, § 32, Series A no. 139). While under the case-law of the EHCR it is the duty of the public authorities to take reasonable and appropriate measures with regard to lawful demonstrations to ensure their

peaceful conduct and the safety of all citizens, they cannot guarantee this absolutely and they have a wide margin of discretion in the choice of means to be used. In this regard the obligation they enter into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved (see *Plattform "Ärzte für das Leben" v. Austria*, cited above, § 34; *Oya Ataman v. Turkey*, no. 74552/01, § 35, ECHR 2006-XIII; *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 37, ECHR 2005-X (extracts) and *Protopapa v. Turkey*, no. 16084/90, § 108, 24 February 2009). However, it is important that preventive security measures such as, for example, the presence of first-aid services at the demonstrations, be taken in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature (see *Oya Ataman v. Turkey*, cited above, § 39).

56. It is further reiterated that, while those who choose to exercise their freedom to manifest their conscience or their religion cannot reasonably expect to be exempt from all criticism, the responsibility of the public authorities may be engaged where their beliefs are opposed or denied in a manner which inhibits those who hold such beliefs from exercising their freedom to hold or express them. In such cases the authorities may be called upon to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs (see, *mutatis mutandis*, *Otto-Preminger-Institut v. Austria*, 20 September 1994, § 47, Series A no. 295-A; *Öllinger v. Austria*, no. 76900/01, § 39, ECHR 2006-IX).
57. In the present case the complainants' bus was attacked by private parties. It has not been shown or argued that EULEX police were present at the scene of the incident complained of. However, it is precisely the absence of EULEX police at the scene and the absence of the necessary foresight which gives rise to concern. The Panel notes that EULEX provided conflicting figures regarding the number of EULEX officers who were on duty at the Vidovdan events and their whereabouts at same.
58. It has not been shown that administrative boundary entrances, routes and relevant road intersections were properly secured and that vehicle convoys travelling along those routes were provided with adequate protection. Whilst the operational details surrounding this matter are better left to the competent authorities of EULEX, the Panel notes the absence of detailed operational documentation and contingency planning, which would suggest that adequate efforts were not made by EULEX in cooperation with KP to ensure that the routes likely to be used by participants had been properly identified and secured with a view to preventing and discouraging attacks by private parties such as those that occurred in the present case.
59. The occurrence of incidents of violence on the day in question which is not in dispute between the parties suggests that the number of EULEX police officers was inadequate to address the executive

mandate responsibilities of EULEX in the context of the large scale gathering which could conceivably be strenuously opposed by certain elements, or parties of the population of Kosovo.

60. Under such circumstances, the Panel is of the view that EULEX should have ensured that an adequate number of EULEX police officers were assigned to monitor those events, that they be placed at critical locations (e.g., administrative boundary entry points; roads to and from those entry points and at identified gathering places as well as at Gazimestan; etc), that they had all the necessary means at their disposal, for instance, in terms of transport and communication as well as means of enforcement, to perform their functions effectively and that they were given clear instructions and guidance as to when and in what circumstances they were required and expected to intervene to prevent human rights violations, including the prevention of intimidating or aggressive behaviour by private parties.
61. The inadequacy of resources allocated by EULEX to this operation contributed to the three complainants being denied the full and effective enjoyment of their right to respect to private life, their freedom of assembly as well as their right to exercise their religion safely and without unnecessary hindrance.
62. As to complainant A, he was stopped by ROSU officers before he was able to reach Gazimestan. The officers checked his identification papers and car documents and searched his car. He was duly ordered to turn back and prevented from travelling to Gazimestan to participate in the event that he wished to attend. Subsequently, he alleged that he was physically assaulted by ROSU police.
63. As in the case of complainants B, C and D, it has not been shown or argued that the EULEX police officers were present at the scene of the incident. It has therefore not been established on the basis of the material before the Panel that EULEX is directly responsible for failure to address or prevent the incident in question.
64. The Panel also takes note of the HoM's submissions that the operation was a KP led operation. Whilst this fact is not in dispute, EULEX bore its *own* responsibility to ensure that its involvement in these events and operations, satisfied and was consistent with relevant human rights standards. In particular, it has not been shown that adequate steps were taken to ensure coordination with KP in order to secure effective protection of participants against inappropriate or excessive action, including alleged human rights violations by KP members. Further, it has not been shown that EULEX authorities provided clear operational guidelines to the EULEX police officers on the ground, in particular in what circumstances the latter would be required to intervene to guarantee the effective protection of human rights.

65. The Panel concludes that, similarly to the other complainants, as a result of insufficient resources being allocated to the Vidovdan operation by EULEX with a view to ensuring respect for human rights, not least by the KP, complainant A was denied the full and effective enjoyment of his right to respect to private life, his freedom of assembly as well as his right to exercise his religion safely and without unnecessary hindrance.
66. The Panel further notes that certain investigative steps were taken after the Vidovdan of 2012 events with a view to establishing the circumstances of one specific attack on the buses which transported the participants to those events. First, the Panel notes that whilst these investigative steps related in some respects to the events that form the background of three of the complaints (i.e., the cases of complainants B, C and D), these investigative efforts did not address most of the incidents of alleged human rights violations listed in the complaints. In particular, the Panel notes the absence of any reference in EULEX's submissions to an effort to investigate the conduct of KP in those incidents. Nor does that information indicate whether the investigation examined the conduct of EULEX officers and whether they had fulfilled their duties and responsibilities in that regard. The Panel also notes that, based on the information provided to it, the events that form the background of complaint A were not the subject of an investigation.
67. Having regard to the above considerations, the Panel concludes that, on the material before it, EULEX failed to show that it had conducted a thorough and adequate investigation into the allegations of human rights violations. This has resulted in the complainants, A, B, C and D being denied an adequate remedy for the violation of their rights.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY,

1. *Holds* that there have been violations of Articles 8, 9, 11 and 13 of ECHR, as well as Articles 17, 18, 21, 22 and 2 of the ICCPR in respect of all four complainants;
2. *Finds* it appropriate, in the light of its above findings of fact and law, to make the following recommendations to the HoM under Rule 34 of its Rules of Procedure:
 - i. That HoM acknowledges that the fundamental rights of the complainants have been breached by EULEX.
 - ii. That HoM requests all relevant branches and organs of EULEX, which possess information regarding last year's Vidovdan events, to provide him with a full and complete overview of EULEX's actions during these events. On that

basis, that the HoM ensures that any information in EULEX's possession regarding possible human rights violations committed in this context (including any violation attributable to KP officers) is provided to the competent Kosovo authorities for follow-up and investigation. Should EULEX later determine that such cases are not being fully and adequately investigated, that EULEX consider taking over the responsibility of investigating these cases.

- iii. The HoM is invited to enquire with competent investigative and prosecutorial elements in EULEX
 - a) whether further investigative steps could be taken in relation to the incident involving complainants B, C and -D; and
 - b) whether the case related to complainant A is being investigated by competent Kosovo authorities and, if not, whether it should be investigated by EULEX.

The Panel invites the HoM to inform the complainants, directly or through the competent investigative organs of EULEX, of the result of these enquiries. The complainants are at liberty to report to the Panel in relation to any outstanding matter when they are contacted by EULEX.

- iv. Regarding the planning of EULEX's involvement in the forthcoming celebrations on 28 June 2013, that the HoM ensures that, the competent organs of EULEX—
 - a) conduct a risk assessment with a view to establishing and identifying possible sources of risks to the effective protection of the human rights of participants in the forthcoming Vidovdan celebrations on 28 June 2013. For that purpose, that competent EULEX organs refer to and learn lessons from the shortcomings in the Vidovdan operation in June 2012 as recorded in the present decision;
 - b) submit to HoM a detailed plan regarding EULEX's involvement in the forthcoming Vidovdan celebrations on 28 June 2013. Such a plan to include a detailed description of the means and resources necessary to ensure that EULEX officers perform their executive mandate and tasks effectively, in particular as regards the protection and preservation of human rights of participants in these events. This will include, if necessary, the option for them to call upon reinforcements. This plan to also include adequate means of communication to ensure that prompt intervention is possible where necessary to pre-empt or put an end to human rights violations;
 - c) ensure adequate coordination between the Mission on the one hand and KP and competent Kosovo authorities on the other so that there is effective protection of the

participants in these events. That EULEX also insist that any KP official involved in this matter be made aware that violence towards participants will not be tolerated and that mechanisms of accountability will be in place to punish wrongdoers;

- d) assign a sufficient and adequate number of EULEX officers to this task, commensurate with the importance of those events and in accordance with the likely risk of human rights violations;
 - e) provide clear guidelines and instructions to all EULEX police officers involved in this operation, in particular with regard to the circumstances under which they would be required to intervene to protect the human rights of participants.
- v. Regarding potential investigation and reporting of misconduct, that the HoM also demands that EULEX officers involved in the operation carefully record any instance of human rights violations which they may witness or which are reported to them. That EULEX, in turn, investigate each of these incidents and/or pass on this information to the competent Kosovo investigative authorities with a view to ensure effective investigation of any such case.

The HoM is invited to inform the Panel of the measures he has undertaken in connection with the present decision by 2 August 2013.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member