



DECISION and FINDINGS

Date of adoption: 21 April 2015

**Cases No. 2013-05; 2013-06; 2013-07; 2013-08; 2013-09; 2013-10;
2013-11, 2013-12; 2013-13; 2013-14**

K, L, M, N, O, P, Q, R, S & T (K to T)

Against

EULEX

The Human Rights Review Panel sitting on 21 April 2015
with the following members present:

Ms Magda MIERZEWSKA, member
Mr Guénaél METTRAUX, Member
Ms Katja DOMINIK, Member

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

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

Having deliberated, decides as follows:

PROCEDURE

1. The complaints K to T were registered on 7 June 2013.
2. With a view to protecting the safety, privacy and identity of the complainants, the Panel has decided, *proprio motu*, to refer to the complainants as K, L, M, N, O, P, Q, R, S & T.
3. On 8 April 2014 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 complaints.

4. The Panel communicated complaints K to T collectively, without prejudice to the possibility to later order a formal joinder of cases pursuant to Rule 20 of its Rules of Procedure. It was also decided to examine the merits of the application at the same time as its admissibility (Rule 30 paras 1 and 2 of the Rules of Procedure of the Panel, hereafter ROP).
5. The observations of the HOM were received on 6 June 2014 after which they were translated and communicated to the complainants for their additional observations.
6. On 18 September 2014 the complainants sent in their additional observations, which were sent to HOM for information. No further observations were requested.
7. The Panel hereby orders the formal joinder of these ten cases (K to T) pursuant to Rule 20 of its Rules of Procedure.

FACTS

I. CIRCUMSTANCES OF THE CASE

8. The Panel did not attempt to determine who committed the impugned ill-treatment, nor did it verify whether all allegations made by the parties could be independently established. The Panel has limited its factual determinations to what was necessary and relevant to deciding the present matter.

The complainants' submissions

9. On 7 January 2013, the complainants came from Leposavić/Leposaviq to Gračanica/Graçanicë Monastery to attend the Christmas liturgy.
10. When the liturgy ended, they went to the building of "Radio Gračanica" where they were to meet some friends in order to organize a joint return to Leposavić/Leposaviq. There, the complainants were approached by Kosovo Police (KP) officers and requested to show their identification. After checking their documents, KP officers ordered the complainants to accompany them to the police station, allegedly because they did not have Kosovo ID cards. One of the KP officers told them that the police would use force if they needed to.
11. At the Police Station in Gračanica/Graçanicë, the KP searched the complainants and their vehicles thoroughly. Thereafter, "*without any explanation, we were deprived of liberty, they handcuffed us and send us to the Police Station No.2 in Pristina*".

12. The complainants state that during *“the whole time [in detention] we were physically and mentally mistreated. At the Police Station we were beaten, they called us offensive names, we were not allowed to use a toilet, and they even did not give us water”*. Late that night, the complainants were transferred to the Central Police Station, where they spent the night in detention without any water or food. According to the complainants, at that time, a number of journalists and members of the EULEX police were present at the entrance of the police station.
13. The following morning, the complainants were ordered out of their detention cells by members of the Regional Operational Support Group (ROSU). The complainants were then handcuffed. Thereafter, the complainants submit that *“some 15 of them [ROSU] beat us up, we were slapped, they hit us with different objects, they were spitting on us, swearing at us, and this continued in the vehicle the whole way to the court when they took the gun and threatened [one of the complainants] that they will kill him if he doesn’t say that “Kosovo is an Independent State”*. The complainants were then brought before the court. The complainants were “acquitted of all charges”. However, they have not provided any details on the alleged charges. They did not provide documents concerning their detention or the subsequent court proceedings. It would appear that they do not possess any.
14. The complainants state that, for a period of 48 hours (from 7 to 8 January 2013), they were brutally mistreated and that one of them *“was at the building of the Court, namely in the toilet, beaten up so hard by the member of ROSU so he had to be urgently transported to the Clinical-Hospital Centre in Belgrade because of seriousness of his injuries”*. The other complainants were treated in the hospital in Mitrovica and the complainants provided detailed medical documentation in respect of this medical treatment.
15. The complainants state that they are *“convinced that EULEX was aware of everything that was going on, from physical and mental mistreatment and from the very beginning when we arrived in Gračanica, since on several occasions we saw their staff members”*. Likewise, the general public was informed of the arrest of “Serbs” in Pristina, *“therefore the members of the EULEX Mission could presume that there was a possibility that we could be mistreated bearing in mind the political security situation in Kosovo”*.
16. The complainants maintain that EULEX knew beforehand about the Serbian Orthodox Christmas celebrations and should therefore have taken additional precautionary security measures, bearing in mind that on that day a significant number of people from all over Kosovo visited the Gračanica/Gračanice Monastery. They further submit that *“EULEX was all the time neutral and uninterested, so by its inactions they contributed in violation of our basic human rights and freedom”*.

EULEX submissions and involvement

17. The EULEX police officers were tasked with escorting the convoy of A.V., the Head of the Serbian Government's Office for Kosovo during his stay in Kosovo. He participated in the celebrations in the Gračanica/Gračanicë Monastery on 7 January 2013. The EULEX police officers escorted him to the monastery but were not present during the liturgy, intending to meet A.V. afterwards, at 14.00.
18. The EULEX officers did not witness the arrest of the complainants. EULEX was informed about it within one hour by the KP. According to information provided at that stage by the KP, the complainants had been wearing black "look-a-like uniforms". This led KP to believe that they belonged to A.V.'s security team. The complainants were taken to the KP Regional Investigation Unit in Pristina for identification and verification. They were assigned defense lawyers and interviewed as suspects.
19. The EULEX police officers escorting A.V. also learned about the arrest when they returned to the monastery at around 12.30.
20. On the same day two EULEX police officers from the Strengthening Division visited the Regional Investigation Unit. The EULEX officers further monitored KP as they processed the complainants, informing them of their rights, taking their photographs and fingerprints, interrogating them. The detention was subsequently authorized by a prosecutor. Neither the complainants nor EULEX have provided the Panel with any information on what was the nature of suspicions against the complainants.
21. The EULEX officers assessed that the complainants were treated well and their rights were respected. They were also satisfied that the case was handled professionally and expeditiously.
22. On 8 January 2013 the complainants were brought the Pristina Court for Minor Offences. Two EULEX police officers were sent to the court to monitor the situation. They were present at hearings of two of the complainants. The complainants showed no signs of distress or anything that could concern. They did not mention anything about being mistreated in any way or shown any signs of injury. The parties' submissions provide no details on the decisions taken by the court.
23. The same evening after the hearings the complainants were released from detention and two of them were immediately taken to the north by their defense lawyers to seek medical treatment. This was when the EULEX was informed about their alleged ill-treatment and forwarded this information through EULEX hierarchy. Several EULEX police officers from the Strengthening Division went to Gračanica/Gračanicë monastery to meet with the remaining complainants. They explained to them that the purpose of their visit was to gather information, not evidence for a criminal investigation

and any complaints relating to their mistreatment should be addressed to the Police Inspectorate of Kosovo.

24. The complainants explained that they had no grievance against the KP officers who conducted their arrest. During most of their stay at the Regional Investigation Unit they were treated well. The beatings started before they were brought before the court. They were brought upstairs one by one. There, police officers waited for them and punched and kicked them. They were then transported to the court, where one of the complainants was again beaten in the bathroom. The complainants believed that the perpetrators belonged to the KP's ROSU. EULEX officers noted that no complainants had visible injuries resulting from the beatings. They refused to be examined by EULEX doctors.
25. The EULEX officers noted that feared further contact with KP and seemed skeptical about contacting the Police Inspectorate. However, they seemed pleased with their interaction with EULEX and explicitly expressed their gratitude for their engagement.
26. One of the EULEX officers spoke to his counterpart in KP and learned that no official case concerning the alleged ill-treatment had been opened. He advised KP that if true, such ill-treatment amounted to a serious criminal offence and violation of human rights.
27. EULEX police officers escorted the complainants to Mitrovica North on the next day. They then visited one of the complainants, who was hospitalised there. He refused to give a statement, but gave his doctor and his family members permission to speak to EULEX. They stated that the complainant had suffered severe damage to his internal organs as a result of beatings at the police station.
28. Documentation gathered by during those events was subsequently forwarded to the EULEX Executive Division.
29. The Police Inspectorate of Kosovo initiated an investigation into the events. EULEX assigned a prosecutor to handle it. The investigation was subsequently led by an international prosecutor from the Basic Prosecution Office and handled by a joint team of investigators from the Police Inspectorate and the EULEX police.
30. On 11 December 2013 eleven members of the Kosovo Police Special Operations Unit (ROSU) were indicted of mistreatment during exercise of official duties, assault and threat. The proceedings against them are pending before the Basic Court of Pristina.

II. RELEVANT APPLICABLE LAW

Joint Action

31. The Articles 2 and 3 of 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), for their relevant parts, 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;

III. COMPLAINTS

32. The complainants allege that the following Articles of the European Convention on Human Right and Fundamental Freedoms (the Convention) were violated:

- Article 3 of the Convention (prohibition of torture, inhuman or degrading treatment);
- Article 5 of the Convention (a right on freedom and security);
- Article 9 of the Convention (freedom of thought, conscience and religion);
- Article 14 of the Convention (prohibition of discrimination).

THE LAW

33. The complainants allege that EULEX actions infringed Article 9 and Article 2 of Protocol No. 4 of the Convention. These provisions, in so far as relevant, read:

Article 3

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

Article 5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

....

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

....

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

.....

Article 9:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Submissions by the parties

34. In his submissions the HoM states that it is not disputed that the complainants were deprived of their liberty. He maintains, however, that international instruments and Kosovo legislation allow for a

person to be deprived of their liberty because of suspicion of a crime. In the present case, the complainants were arrested under suspicion of criminal activity and there is nothing to suggest that the arresting officers did not genuinely suspect that the complainants had committed the same. The EULEX officers who visited the complainants in the Regional Investigation Unit had no objections to voice to their Kosovo counterparts neither about the fact that the arrest had taken place nor about how the complainants were processed. It was clear to the EULEX officers that the complainants had been informed about the reasons for their arrest. The detention was confirmed by the prosecutor on the same day and the complainants were promptly, on the very next day, brought before the court.

35. As regards the allegations of ill-treatment while in detention, the HoM does not question that it would amount to a very serious violation of their human rights. He asserts that a number of EULEX reports and a subsequent criminal investigation suggest that such ill-treatment did take place. Nevertheless, the HoM submits that the alleged perpetrators have a right to be considered innocent until proven guilty by a competent court. However, the HoM argues that, should the Panel find that alleged ill-treatment did take place, EULEX fulfilled its obligation to take all reasonable steps to prevent it and to react, with the ensuing criminal investigation. EULEX took continuous steps to ensure that the case was being dealt with in a human rights' compliant manner. They monitored the complainants' movements within Kosovo and their interactions with the police and the court. They did not stay with the complainants in the Regional Investigation Unit, but from information available, it was a reasonable decision. There is nothing to suggest that any mistreatment had taken place at that stage.
36. EULEX were not present during any of the alleged mistreatments. Should the Panel find that they took place, that was not reasonably foreseeable to EULEX. Moreover, EULEX had no record of any hostile incidents during Christmas celebrations from previous years. EULEX has therefore done all that could reasonably be expected to assure the rights of the complainants.
37. In their response to those observations, the complainants state that they believe that EULEX, as main warrant for respect of human rights in Kosovo, was obliged to prevent violations of their fundamental rights, committed by members of KP which is monitored by EULEX. They emphasise that EULEX was well aware of their arrest and they learned about it relatively fast. EULEX paid visit to the Regional Investigation Unit where they found out there was nothing that would lead the KP to a conclusion that the complainants committed any kind of criminal act. In the complainants' opinion this should have given EULEX a clue that they ought to follow the actions of KP more closely and therefore prevent violation of their rights.

38. The complainants conclude that their fundamental human rights have been violated by Kosovo Police, and that EULEX as a main warrant for respect of human rights in Kosovo by its failure to act bears the responsibility.

The Panel's assessment

Mandate of the Panel (Rule 25 par. 1 of the Rules of Procedure)

39. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights which set out minimum standards for the protection of human rights which must be guaranteed by public authorities in all democratic legal systems.
40. Before considering the complaint on its merits the Panel has to decide whether to accept the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
41. No observations were made by the parties with regard to the admissibility of the complaints.
42. According to Rule 25, paragraph 1, the Panel can only examine complaints relating to the 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.
43. The Panel has already established that the actions of the EULEX police are part of the executive mandate of the EULEX Kosovo and therefore fall within the ambit of the Panel's mandate (see, for instance, *Krlić against EULEX*, no. 2012-21, 26 August 2014, § 23; *Y against EULEX*, no. 2011-28, 15 November 2012, § 35). The circumstances of the current case relate to actions taken by EULEX police officers working within the Mission's Strengthening Division.
44. The Panel has also held that the mere fact that the police operations on that day were 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. In such circumstances, the Panel will consider, in particular, whether any shortcoming attributable to EULEX could have violated or contributed to a violation of the human rights of the complainants (*A,B,C and D against EULEX*, nos 2012-09 to 2012-12, 20 June 2013, § 45)

Admissibility of the complaint under Article 5 of the Convention

45. Notwithstanding the above considerations, the Panel reiterates what it has already held on numerous occasions. In certain circumstances its jurisdiction would cover decisions and acts of the investigative authorities in criminal investigations even when they were subject to a subsequent judicial review. The Panel is of the view that it would have jurisdiction to examine such acts and decisions where the subject matter of acts and decisions subject to such review touches on human rights issues such as, for example, the right to personal liberty and security within the meaning of Article 5 of the Convention. However, the Panel would only intervene if and where allegations of human rights violations attributed to the prosecutor have not been fully addressed by the competent judicial authorities. (*Z against EULEX*, 2012-06, 10 April 2013, par. 34). The Panel sees no reason why this principle should not apply to actions of EULEX police as well.
46. Turning to the circumstances of the present case, the Panel observes that the complainants were brought before the Pristina Court for Minor Offences on 8 January 2013 and released in the evening of the day. That court was therefore given an opportunity to examine whether their arrest was lawful and justified in the circumstances. However, neither party has submitted to the Panel, in support of their arguments, a copy of any relevant document.
47. Having regard to the fact that the complaint made under Article 5 of the Convention has not been properly substantiated by any document crucial to the examination whether the detention complained of was lawful and justified and, consequently, whether the actions of EULEX in this connection were compliant with the standards determined by this provision, the Panel finds it manifestly ill-founded.

Alleged violations of Articles 3, 9 and 14 of the Convention

48. The Panel will first examine the complaint under Article 3.
49. As already submitted by EULEX in *Bahadur and others against EULEX* (2011-02, 14 September 2011, § 39) and reiterated by the Panel in *Kahrs against EULEX* (2012-16, 10 April 2013, § 26 “EULEX police retain a corrective capacity, which is a special form of the executive powers. Such powers can be used in relation to any violations of human rights and inappropriate operational or administrative decisions made by the Kosovo Police”.
50. The Panel notes that EULEX police officers present during the material events were acting in an advisory capacity and exercising monitoring, mentoring and advising (MMA) responsibilities.

51. The Panel further notes that MMA activities can carry a positive obligation to take action where immediate intervention is needed in view of the protected right.
52. In this regard the Panel finds relevant the approach developed by the European Court of Human Rights (the Court) which implies that under the Convention in certain well-defined circumstances a positive obligation arises on the part of the authorities to take preventive operational measures to protect an individual. In this regard the Court noted in the context of cases concerning the right to life that “bearing in mind 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, such an obligation 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. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention” (see, among other authorities, *Osman v the UK*, judgment of 28 October 1998, § 115 et seq.).
53. The Panel accepts that given the limited 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. It is noted, 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 concerning human rights (see Article 3 (i), Council Joint Action 2008/124/CFSP). Within the context of MMA the obligation for EULEX officers to act in order to prevent human rights violations can be said to arise when they are faced with a threat of any imminent and serious violation of individual rights, regardless of the subject matter of the right concerned. 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 (compare *Kahrs*, quoted above, §§ 30-31).
54. Nevertheless, bearing in mind 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, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every risk to human rights can entail for the authorities a requirement to take operational measures to prevent

that risk from materialising (see, *mutatis mutandis*, *Osman*, quoted above, § 116).

55. Referring to the circumstances of the instant case, the Panel observes that the EULEX police officers were not present during the material incidents and learned about them only afterwards. They did not witness the moment of the complainants' arrest, which took place at some distance from the place of celebrations but, having learned about it, followed them to the detention place. They monitored and interviewed the complainants, who seemed to have had no complaints at that time. They were satisfied that the complainants were treated well and in accordance with the law. The Panel accepts that at the time of EULEX visit in the complainants appeared to be in good health and did not complain about any mistreatment.
56. The EULEX police officers were also present at court, during the complainants' hearings and there not aware of any complaints during that time either.
57. Having learned about the complainants' alleged mistreatment the EULEX police officers interviewed them and advised them on possible avenues to have the perpetrators investigated.
58. In the view of the Panel the complainants have failed to point to any decisive stage in the sequence of the events leading up to their mistreatment when it could be said that the EULEX officers knew or ought to have known that their wellbeing was in danger (see, *a contrario*, *A,B,C and D*, § 47). Although in their initial complaint they stated that "*the whole time [in detention they] were physically and mentally mistreated*", their further submissions, EULEX reports and the indictment (filed only against ROSU officers present on the day of the hearings) would suggest that no ill-treatment took place until just before the complainants were transported to their hearings.
59. Moreover, in contrast to the cases *A,B,C and D*, it has not been shown that it was the inadequacy of resources allocated by EULEX to monitor the events of the Christmas day that contributed to the alleged violations of the complainants' rights (compare *A,B,C and D*, § 61). These were allegedly committed by KP officers, within the confines of the detention centre. The Panel notes that it is neither required nor would be possible for EULEX staff to be present by the side of the KP and monitor their actions at all times. The Panel considers that EULEX police did all what could be possible in the circumstances.
60. The Panel further notes that investigative steps were taken in order address alleged human rights violations listed in the complaints. A joint investigation by KP and EULEX under the supervision of an EULEX prosecutor was launched and the alleged perpetrators were indicted. The case against them is currently pending before the Basic Court of Pristina. It is not necessary for the Panel for the purposes of

the present case concerning the allegations of shortcomings on the part of EULEX to have at its disposal information about the merits of the criminal case against the Kosovo Police officers.

61. Having regard to the circumstances of the case seen as a whole the Panel is of the opinion that the situation complained of did not amount to a violation of Article 3 of the Convention attributable to EULEX.
62. In view to the findings under Article 3, the Panel considers that it is not necessary to examine the complaints under Articles 9 and 14 of the Convention, as no separate issue arises under those provisions.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY

1. *Declares* the complaints under Article 5 of the Convention inadmissible as being manifestly ill-founded;
2. *Holds* by that there has been no violation of Article 3 of the Convention;
3. *Holds* that it is not necessary to examine the case under Articles 9 and 14 to the Convention.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member