HUMAN RIGHTS REVIEW PANEL

CASE-LAW NOTE ON

THE DUTY TO INVESTIGATE ALLEGATIONS OF VIOLATIONS OF RIGHTS

Table of Contents

1. General considerations: A duty to investigate allegations of human rights violations

i. Relevance of the mandate of the Mission

The Human Rights Review Panel ("Panel") has pointed out that the obligation of the EULEX Mission to investigate credible allegations of human rights violations has its source in the Mission's general obligation to conduct its operations in a manner consonant with the effective protection of fundamental rights. Thus, to the extent that an obligation to investigate allegations of rights violation exists and as a matter of human rights law, such an obligation does in principle apply to EULEX as a rule of law mission. As the Panel has noted in *Sadiku-Syla,*

> "The HoM argues, however, that these provisions do not "establish an inherent obligation on EULEX Prosecutors to act". However, the question here is not one of "obligation", but of jurisdiction or competence of EULEX Prosecutors to investigate this matter. And the provisions cited above clearly provided a sufficient legal basis giving EULEX Prosecutors authority to investigate this case. The Mission's *obligation* to do so arises, for present purposes, not from these provisions, but from Articles 2-3 of the European Convention, which mandates those bound by the Convention to investigate allegations of violations of these rights. [...] In that sense, the jurisdictional competence ("possibility") that these provision provide are sufficient for the purpose of establishing the Panel's competence over this case." [1]

However, because of the limited (executive) mandate of the Mission, the extent to which such an obligation to investigate may arise for the Mission might be more limited in scope than would typically be the case for a State. This obligation to investigate allegations of violation of rights may only arise if this violation is alleged to have taken place in the context of the Mission's executive mandate, i.e., the activities over which the Panel is competent to evaluate the acts and conduct of the Mission.

[1] See, *Rejhane Sadiku-Syla against EULEX,* 2014-34, 29 September 2015, para. 58; and its references also to ECtHR *McCann and Others v. the United Kingdom*, Application number 18984/91, judgment of 27 September 1995, para. 161; *Assenov and Others v. Bulgaria*, Application no. 24760/94, judgment of 28 October 1998, para. 102.

Within that general context and the original legislative framework under which the Mission was operating, the Mission had relatively broad investigative and prosecutorial competences in relation to broad range of offences that involved or amounted to serious violations of human rights. Thus, a valid legal basis authorising EULEX prosecutors to investigate certain types of cases was provided as follows; Article 8 of the Law on Jurisdiction (Law No. 03/L-053) read in conjunction with Article 5, paragraph 1, items e) and f) of the Law on the Special Prosecution Office of Kosovo (Law No. 03/L-052) pertaining to war crimes and crimes against humanity; Article 8 of the Law on Jurisdiction read in conjunction with Article 3, paragraph 3, item g, pertaining to kidnapping, hostage-taking and murder; and Article 11 of the Law on Jurisdiction pertaining to hate-motivated crimes.[2] In addition, according to Article 12 of the Law on Jurisdiction, the Chief EULEX Prosecutor could request a case to be assigned to EULEX prosecutor if a Kosovo Public Prosecutor is unwilling or unable to perform his or her duties and this unwillingness or inability might endanger the proper investigation or prosecution of a criminal offence, or whenever there is a grounded suspicion of attempts made to influence the investigation or prosecution of a criminal offence.[3]

The refocusing and narrowing of the Mission's mandate on 15 April 2014 resulted in a sharp reduction in the scope of its investigative competence and authority.[4] Under the new framework, EULEX's investigative and prosecutorial competencies were limited in principle to cases for which a EULEX investigation/prosecution was on-going on the cut-off date of 15 April 2014.[5] Passed that point, EULEX prosecutors could still act by applying a "saving clause" (Article 7 (A) of the Law No. 04/L-273) where the taking over of the case by EULEX was justified by "extraordinary circumstances". Particularly relevant in determining whether "extraordinary

[2] See, e.g., *Rejhane Sadiku-Syla against EULEX*, 2014-34, 29 September 2015, para. 57; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 30 September 2015, para. 85. Regarding, generally, the authority of EULEX prosecutors under Law on Jurisdiction, see in particular, *Sadiku-Syla against EULEX,* 2014-34, 29 September 2015, paras. 53-63; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R.,* 2014-11 to 2014-17, 30 September 2015, paras. 84-90; *X and 115 other complainants,* 2011-20, 22 April 2015, paras. 60-64.

[3] *Rejhane Sadiku-Syla against EULEX*, 2014-34, 29 September 2015, para. 57; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 30 September 2015, para. 86.

[4] The Law itself came into force on 7 May 2014.

[5] So called "ongoing cases", see, Law No. 04/L-273, "On the amending and supplementing the laws related to the mandate of the European Union rule of law mission in the Republic of Kosovo.

circumstances" exist in a particular case was the question of whether the matter in question had already been or was being subject to an effective investigative effort by other competent authorities. The Panel explained that –

> "Among the considerations relevant to the existence of "exceptional circumstances" are the following: first, whether an effective investigation of the case has been conducted up to that point. A negative answer would militate in favour of EULEX Prosecutors exercising their "exceptional" competence. In the present case, the Panel has already found that that the cases were never subject to a full and effective investigation for any significant period of time by any one entity. Secondly, it is relevant whether the case concern important rights and violations of extreme gravity. Such considerations would again weigh in favour of the "exceptional" involvement of EULEX Prosecutors. The cases under consideration here all pertain to a series of fundamental rights, including the right to life. Also, there was a very real possibility that those crimes and the accompanying violations of rights were based on ethnic or religious considerations thereby going further into the jurisdictional territory over which the Mission has competence. In a post-conflict environment where ethnic and religious relations might still be tense and fragile, such cases are obvious investigative priorities. This, again, does not appear from the record to have been considered relevant to the Mission's determination of "exceptional circumstances". Thirdly, if the EULEX Prosecutors decide not to exercise their "exceptional" competence, is there a genuine and real prospect of local authorities carrying out their responsibility in relation to that case. In the present case, there is no indication that this would be the case or that any steps were taken in order to establish facts relevant for the existence of such prospect [...]."[6]

ii. Relevance of available means to establishing the nature and scope of the obligation to investigate

[6] *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R.,* 2014-11 to 2014-17, 19 October 2016, para 85. See also *X. and 115 other complainants against EULEX*, 2011-20, 22 April 2015, para. 60-66; Sadiku-Syla, 2014-34, 19 October 2016, para. 43-46; *Sadiku-Syla against EULEX,* 2014-34, 29 September 2015, para. 62; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R.,* 2014-11 to 2014-17, 30 September 2015, para. 90.

The Panel has repeatedly highlighted the fact that the Mission cannot be expected to do more than what can be reasonably achieved with the resources at its disposal.[7] This is true also of the investigative obligations that might arise from general responsibility of the Mission to conduct its affairs in a manner consistent with relevant human rights standards.[8] The number of investigations that the Mission will be able to take on, the resources that it will be able to invest in each case as well as the sort and depth of expertise that it will be able to deploy in any one case will ultimately be dependent on the amount and quality of resources that is put at its disposal. In that sense, when assessing whether the Mission has fulfilled its investigative obligations in any particular case, the Panel has been mindful of the limitations of resources (including in terms of personnel and expertise) placed upon the Mission. The Panel has stated

> "As a preliminary matter, the Panel notes that EULEX is not expected to provide better policing than the resources put at its disposal would allow. EULEX is obliged, however, to take necessary and reasonable measures within the scope of its competence to provide for the effective protection of the human rights of those who find themselves on the territory of Kosovo."[9]

iii. Requirement of an effective investigation

Within the relevant legislative framework and accounting for the limitations placed upon its resources, the Mission and its organs are expected and required to conduct their operations in a manner consistent with relevant standards of human rights protection.

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[7] *Sadiku-Syla against EULEX*, 2014-34, 19 October 2016, para. 30; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 30 September 2015, para. 72; *L.O. against EULEX*, 2014-32, 11 November 2015, para. 45, and its references to *HRAP decision in cases nos 248/09, 250/09 and 251/09,* 25 April 2013, paras. 70-71; *Sadiku-Syla against EULEX*, 2014-34, 29 September 2015, para. 37; *Mursel Hasani against EULEX*, 2010-05, 14 September 2011, para. 68; *Thomas Rüsche against EULEX*, 2013-21, 11 January 2017, para. 57.

[8] *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 30 September 2015, para. 88, and its references to *McCann and Others v. the United Kingdom*, Application number 18984/91, judgment of 27 September 1995, para. 161; *Assenov and Others v. Bulgaria*, Application no. 24760/94, judgment of 28 October 1998, para 102.

[9] See, generally, *H & G against EULEX,* 2012-19 & 2012-20, 30 September 2013, para. 44.

As to the investigative obligations, the Mission is required to investigate credible allegations of human rights violations with diligence and expeditiousness, and to ensure in all cases that the investigative response of the Mission is commensurate to the gravity of the matter. In sum, the response must be such that it guarantees the effective protection of the rights that are at stake.[10]

The overall requirement of effectiveness of the investigation has been interpreted by the Panel as requiring that the competent authorities should put in place an effective mechanism – judicial or otherwise - capable of establishing the circumstances in which the rights in question were violated as well as bring those responsible to justice. The Panel has previously noted

> "Article 2 does not concern only deaths resulting from the use of force by agents of the State. The procedural obligation referred to above calls for an effective judicial system which can determine the cause of death and bring those responsible to account [...] The authorities must therefore ensure, by all means at their disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished [...]" [11]

The two main areas where the Panel determined that the Mission had specific investigative obligations was in relation to allegations of violations of the right to life (Article 2 ECHR) and the right to an effective remedy (Article 13 ECHR). In that context, the Panel adopted the ECtHR's view that there are in relation to certain protected rights a "procedural obligation on the authorities to carry out an effective investigation into alleged breaches of the substantive limb of these provisions". The

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[10] *Sadiku-Syla against EULEX*, 2014-34, 19 October 2016, para. 36. See also *Varnava and Others v Turkey*, Application no. 16064/90 et al, judgment of 18 September 2009, para. 191; *Oğur v. Turkey,* Application no. 21594/93, judgment of 20 May 1999, para. 88; *Hugh Jordan v. the United Kingdom*, Application no. 24746/94, Judgment 4 May 2001, paras. 105-09; *Douglas-Williams v. the United Kingdom*, Application no. 56413/00, Decision of 8 January 2002.

[11] *Sadik Thaqi against EULEX*, 2010-02, 14 September 2011, para. 69, and its references also to *Calvelli and Ciglio v. Italy*, Application no. 32967/96, judgment of 2002, para. 49; *Vo v. France*, Application no. 53924/00, judgment of 8 July 2004, para. 89; *Šilih v. Slovenia*, Application no. 71463/01, judgement of 9 April 2009, para 192; *Rajkowska v. Poland*, Application no. 37393/02, Decision of 27 November 2007. See also *Mursel Hasani against EULEX*, 2010-05, 14 September 2011, paras. 66 – 71; *Zavoloka v. Latvia*, Application no. 58447/00, judgment of 7 July 2009, para. 34.

Panel did not specify the scope or categories of rights – other than the right to life – in relation to which such an obligation exists for the purpose of its jurisdiction. The Panel has stated,

> **"**Having regard to its fundamental character, Article 2 of the Convention imposes also a procedural obligation on the authorities to carry out an effective investigation into alleged breaches of the substantive limb of these provisions [...]"[12]

In this context, the requirement of an "effective remedy" following a violation of right may not always demand that the authorities undertake the responsibility for investigating the allegations. Nevertheless, where such a remedy exists, it must be effective, that is, capable of providing redress and offering reasonable prospects of success. As the Panel has pointed out

> "The scope of application of Article 13 varies depending on the nature of the applicant's complaint. In every case, however, the remedy required by Article 13 must be "effective" in practice as well as in law [...] Where alleged failure by the authorities to protect persons from the acts of others is concerned, Article 13 may not always require that the authorities undertake the responsibility for investigating the allegations [...] Nevertheless, where such a remedy exists, it must be effective, that is, capable of providing redress and offered reasonable prospects of success [...]"[13]

iv. Obligation to investigate as an on-going obligation

The duty and responsibility of the Mission to investigate alleged violations of rights continues for as long as an effective investigation has not been undertaken. In the

[12] *Sadik Thaqi against EULEX*, 2010-02, 14 September 2011, para. 68, and its reference also to *Giuliani and Gaggio v. Italy*, Application no. 23458/02, judgment of 24 March 2011, para. 298. See also, *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R*., 2014-11 to 2014-17, 19 October 2016, paras. 78 and 88.

[13] See *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 63, and its references also to *Aksoy v. Turkey,* Application no. 21987/93, judgment of 18 December 1996, para. 95; *Aydın v. Turkey,* Application no. 23178/94, judgment of 25 September 1997, para 103; *D.P. and J.C. v. the United Kingdom*, Application no. 38719/97, judgment of 10 October 2002, para. 135; *O'Keeffe v. Ireland*, Application no. 35810/09, judgement of 28 January 2014, para. 177.

case of a rule of law mission such as EULEX, this means that cases which had not been fully or properly investigated by the previous international mission, UNMIK, could be passed on to it and create an obligation to investigate them. In its early jurisprudence the Panel determined that, for this obligation to materialise, a "continuous link" between the fact subject to investigation (e.g., a suspicious death) and the mandate of the Mission must exist. In addition, it must be established that a significant proportion of the procedural steps were or ought to have been carried out after EULEX assumed responsibility for the investigation. The Panel has explained,

> "83.The Panel observes that the complainant claims, in essence, that the EULEX authorities had not discharged their obligation flowing from the procedural limb of Article 2 of the Convention, which required them to conduct an adequate and effective investigation into the death of his son. The procedural claim is not related to the alleged failings in the investigation or any subsequent legal proceedings but to the alleged complete absence of any investigation into the responsibility of the prison authorities for his son's death.
> 84. In this connection, the Panel notes that in December 2008, when EULEX assumed responsibility from UNMIK, approximately five (5) years had elapsed since the incident. The pending proceedings instituted by UNMIK and subsequently taken over by EULEX concerned only the investigation in respect of possible criminal offences committed by the prisoners. At no time was any investigation conducted, beyond the Commission's report referred to above, in respect of possible criminal liability on the part of persons acting in their capacity of the prison authorities.
> 85. For the EULEX actions and/or omissions to be considered under the requirement of procedural obligations emanating from Article 2 of the Convention, there should be a continuous link between the deaths that occurred in 2003, the investigation that followed and the time when EULEX assumed responsibility for the matter in 2008.
> 86. Moreover, it must be established that a significant proportion of the procedural steps were or ought to have been carried out after EULEX assumed responsibility for the investigation (see paragraphs 74-77 above).
> 87. As it is, it has not been shown or even claimed that EULEX conducted any investigation with regard to the prison authorities' responsibility in the incident.
> 88. In the absence of any investigation conducted by the UNMIK concerning possible criminal liability on the part of the prison authorities in respect of the events concerned and having regard to the temporal scope of the Panel's

jurisdiction, it can not be said that there is a continuous link, as mentioned above in paragraph 76, which would create an obligation under Article 2 of the Convention for EULEX to commence, at present, an investigation in respect of the authorities' responsibility for the events concerned."[14]

In subsequent cases the Panel loosened somewhat this requirement of connectivity. The Panel sought to verify if, from December 2008 onwards when the Mission became competent to conduct investigations, the Mission had become aware of credible allegations of rights violations that had not been subject to an effective investigation. If this was established, the Panel found that the Mission could be held responsible for its failure to act.[15]

The obligation to investigate is therefore not exhausted by the failure of the previously competent authority to carry out its own investigative obligations. Nor is the obligation revoked by the decision of another authority to close a particular investigation.[16] The responsibility of the Mission to decide whether to commence, conduct and end an investigation is and remains at all times its own. Thus the Mission will be held responsible for a failure to do so if and where the initiation, continuation or finalisation of an investigation would have been justified in the circumstances.[17]

2. Duty of diligence and expeditiousness

i. General considerations

The scope of the fundamental right to an effective remedy (as guaranteed, *inter alia*, by Article 13 of the ECHR) varies depending on the nature of the complaint that is at stake. In every case, however, the remedy that is provided by the authorities must be "effective" in practice as well as in law. Where alleged failure by the authorities to

[14] See *Sadik Thaqi against EULEX*, 2010-02, 14 September 2011, paras. 83 – 88.
[15] See, e.g., *Sadiku-Syla against EULEX*, 2014-34, 19 October 2016, para. 39-42; *X and 115 other complainants against EULEX*, 2011-20, 22 April 2015, paras. 64-67.
[16] *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R.,* 2014-11 to 2014-17, 19 October 2016, paras. 71 and 73. See also, Annual Report of the HRRP, pages 45 and 46, and The Human Rights Advisory Panel Final Report, paras. 230 – 231 and 236.
[17] *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R*., 2014-11 to 2014-17, 19 October 2016, paras. 71 and 81.

protect persons from the acts of others is concerned, it may not always require that the authorities undertake the responsibility for investigating the allegations. Nevertheless, where such a remedy exists, it must be effective, that is, capable of providing redress and offer reasonable prospects of success. The Panel has stated

> "The scope of application of Article 13 varies depending on the nature of the applicant's complaint. In every case, however, the remedy required by Article 13 must be "effective" in practice as well as in law [...] Where alleged failure by the authorities to protect persons from the acts of others is concerned, Article 13 may not always require that the authorities undertake the responsibility for investigating the allegations [...] Nevertheless, where such a remedy exists, it must be effective, that is, capable of providing redress and offered reasonable prospects of success [...]"[18]

In the performance of its investigative duties, the Mission has been said to be bound by a general obligation of diligence and expeditiousness. The Panel has pointed out that –

> "In every case, the investigative authorities are expected to act with reasonableness, promptness and expeditiousness and to invest resources commensurate with the necessity and possibility of resolving the case in question. Whilst no investigative authorities may be expected to resolve all cases brought before it, it is expected to act with such diligence, promptness and effectiveness as reflect the gravity of the matter being investigated. A strict commitment and attachment to those standards is particularly important for a rule of law mission that is intended to serve as example of society's commitment to ending impunity and building into it a sense of accountability for serious violation of rights. Any standard short of that one would risk creating a sense of acquiescence with impunity and disregard for victims' search for justice and accountability [...][19]

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[18] *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 63, and its references also to *Aksoy v. Turkey,* Application no. 21987/93, judgment of 18 December 1996, para. 95; *Aydın v. Turkey,* Application no. 23178/94, judgment of 25 September 1997, para. 103; *D.P. and J.C. v. the United Kingdom*, no. 38719/97, judgment of 10 October 2002, para. 135; *O'Keeffe v. Ireland*, Application no. 35810/09, judgment of 28 January 2014, para. 177.

[19] *Maksutaj against EULEX*, 2014-18, 12 November 2015, para. 56, and its reference to HRAP decision in cases nos. 248/09, 250/09 and 251/09, 25 April 2013.

The tenor of what this general obligation might imply in a particular case depends in part on the peculiarities of that case – in particular, what right or rights were at stake, how grave the violation might be, what resources are available to the mission and what information has already been collected.

ii. Duty of diligence and its meaning

The duty of diligence which a rule of law mission must demonstrate in the exercise of its investigative responsibilities must satisfy a number of basic requirements, which may be summarized thus:

a. The competent authority is required to act *proprio motu* when seized of credible information suggesting that a violation of rights has occurred that comes within the scope of its investigative responsibilities;
b. The nature of its response must be commensurate to the gravity of the matter;
c. It must focus its investigation on and address the violations of rights which it has learned about and all relevant circumstances;
d. To perform that duty, it must invest resources commensurate with the necessity and possibility of resolving the case in question;
e. As for the manner in which it conducts that investigation, it is expected and required to take such steps and adopt such measures as are capable of establishing the relevant facts and, as the case may be, identify the persons who might be responsible for the violation of rights;
f. At all relevant stages of the process, it must ensure that victims and witnesses are treated with respect. In addition, victims must be kept sufficiently informed of the process.
g. Where the investigation is closed or terminated, the authorities must in principle provide sufficient reasoning for doing so in order to guarantee transparency and public scrutiny of their actions.

Strict adherence to these requirements is particularly important for a rule of law mission that is "[...] intended to serve as example of society's commitment to ending impunity and building into it a sense of accountability for serious violation of rights.

Any standard short of that one would risk creating a sense of acquiescence with impunity and disregard for victims' search for justice and accountability [...]"[20]

a. Duty to act upon receiving information

The duty to investigate allegations of human rights violations arise from the moment the authorities learn of credible information pointing to the occurrence of such a situation. It does not and cannot depend on the victims of that violation – or their relatives – formally raising the issue with the authorities. The Panel has noted that –

> "[...] EULEX's competence and responsibility to investigate crimes falling within its mandate is not conditioned by the actions of an injured party. In a case such as the present one, EULEX is responsible to act *proprio motu* with a view to ensuring that the disappearance is being diligently, promptly and effectively investigated. Accordingly, a rejection of the complainant's requests for information in no way affected the Mission's *proprio motu* obligations to guarantee the effectiveness of the complainant's fundamental rights [...]."[21]

Nor does it depend on the Mission having been formally seized of the matter. Nor can it depend on the victim having filed a complaint.[22]

b. A response commensurate to the gravity of the matter

A diligent investigative response must be commensurate to the gravity of the matter, in the sense that the nature of the response must, in all relevant respects reflect the importance of the right(s) and protected interests that are at stake in the case in question and the gravity of the threat posed to those rights. The Panel has noted that–

> "[...] investigative steps must be commensurate in nature with the gravity of the alleged violation [...] In this case, the alleged violation could not be any more serious. One could therefore have expected the Mission to involve

[20] *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX,* 2014-11 to 2014-17, 30 September 2015, para. 75, and its references also to HRAP decision in cases nos. 248/09, 250/09 and 251/09, 25 April 2013, para 80.
[21] See, e.g., *L.O. against EULEX,* 2014-32, 11 November 2015, para. 63, and its references also to *Ahmet Özkan and Others v. Turkey*, Application no. 21689/93, judgment on 6 April 2004, para. 310; *Isayeva v. Russia*, Application no. 57950/00, judgment of 24 February 2005, para. 210.
[22] *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX,* 2014-11 to 2014-17, 19 October 2016, para. 70.

> significant resources (in personnel, time and resources) into this case. The Panel has not received any indication that this was the case and draws the necessary inferences from the absence of such information."[23]

This encompasses, for example, the amount and categories of resources invested as well as expeditiousness of process. Thus, in a case where death has or might have occurred, the authorities would be expected to invest a significant amount of time and relevant resources to investigate and seek to resolve the circumstances in which this might have occurred.[24]

c. Capable of addressing the human rights issues in question

To meet the requirement of diligence, the investigative effort undertaken by the authorities must be directed at addressing the facts and circumstances that resulted in or contributed to the violation of a right. An investigation that would fail to address these and, instead, focus narrowly on one aspect of the case or at unrelated matters or inexplicably fails to address the responsibility of particular individuals would not in principle meet that requirement. In a case involving serious interferences with the right of individuals to exercise their right of assembly and religion, the Panel has noted 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

[23] See e.g. *L.O. against EULEX*, 2014-32, 11 November 2015, para. 59, and its references also to *Varnava and Others v. Turkey*, Application no. 16064/90 et al, judgment of 18 September 2009, para. 191; *Palić v. Bosnia and Herzegovina,* Application no. 4704/04, judgment of 15 February 2011, para. 63.
[24] See, again, e.g., *L.O. against EULEX,* 2014-32, 11 November 2015, paras. 46, 59-60.

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." [25]

d. Investment of adequate resources

A significant element of diligence required in all cases is the necessary adequacy between the violation or rights of the response of the authorities. This refers to the amount, type and quality of the resources that the investigative authorities invest to resolve the case in question. As a subsidiary entity, a rule of law mission can only ever be expected to invest into an investigation what has been put at its disposal.

"As a preliminary matter, the Panel notes that EULEX is not expected to provide better policing than the resources put at its disposal would allow. EULEX is obliged, however, to take necessary and reasonable measures within the scope of its competence to provide for the effective protection of the human rights of those who find themselves on the territory of Kosovo."[26]

In that sense, the Mission cannot be expected to perform the impossible or more than it was enabled to achieve through external allocation of resources.[27] Within that framework, however, the Mission is expected to "invest resources commensurate with the necessity and possibility of resolving the case in question".[28] The Panel has, in more detail, stated

[25] See e.g. *A,B,C,D against EULEX,* 2012-09 to 2012-12, 20 June 2013, paras. 66-67.
[26] See e.g. *H & G against EULEX*, 2012-19 & 2012-20, 30 September 2013, para. 44. See also, *Thomas Rüsche against EULEX*, 2013-21, 11 January 2017, para. 57.
[27] *L.O. against EULEX, 2014-32*, 11 November 2015, para. 45, and its references also to HRAP decision in cases nos 248/09, 250/09 and 251/09, 25 April 2013, paras. 70-71.
[28] *Maksutaj against EULEX*, 2014-18, 12 November 2015, para. 56. See also *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 30 September 2015, para. 75.

"[...] as a result of insufficient resources allocated to the Vidovdan operation by EULEX with a view to ensuring respect for human rights, inadequate training and insufficient operational guidelines, complainant H and G were denied the full and effective enjoyment of their right to respect to private life, freedom of assembly as well as right to exercise their religion safely and without unnecessary hindrance." [29]

The Panel has also noted the following in another 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."[30]

e. Duty to seek and collect all relevant evidence reasonably available to the investigative authority

[29] *H & G against EULEX*, 2012-19 & 2012-20, 30 September 2013, para. 53.
[30] See also *A,B,C,D against EULEX,* 2012-09 to 2012-12, 20 June 2013, paras. 59-61.

To meet the requirement of diligence, the authorities are expected and required to take such steps and adopt such measures as are capable of establishing the relevant facts and, as the case may be, identify the persons who might be responsible for the violation of rights. The Panel had, for example, approved of the steps taken as it found that

> **"**[...] the prosecutor's decision, as summarized in paragraphs 32-34 above, shows that there was a genuine attempt, based on the existing investigation material gathered by the UNMIK authorities, to establish the relevant facts and identify the persons from among the prisoners responsible for the deaths of five inmates."[31]

In a situation where grave violations of rights are at stake, such as where a criminal offence might have been committed, diligence would require of the authorities to pursue all credible lines of investigation and collect all information potentially relevant to the case. The Panel has thus noted the following:

> "70.The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work [...]." [32]

Similarly, the Panel also noted the following:

> "[...] EULEX carried out an investigation into each and every allegation brought by the complainants. To that extent, the Mission cannot be said to have neglected to investigate altogether a particular aspect of the case. The Panel also notes that the EULEX Prosecutors took various steps to obtain

[31] *Sadik Thaqi against EULEX*, 2010-02, 14 September 2011, para. 98.
[32] See e.g. *Sadik Thaqi against EULEX*, 2010-02, 14 September 2011, para. 70, and its reference to *Velcea and Mazăre v. Romania*, Application no. 64301/01, judgment of 1 December 2009, para. 105.

> relevant information – including by seeking the assistance of local and Serbian authorities. Other investigative steps were also duly taken. Furthermore, the Panel has found no indication that the complainants were discriminated against because of their ethnic background.[33]

Depending on the circumstances of the case, a diligent investigation might require the authority to interview potential witnesses, to have recourse to relevant forensic examinations or to apprehend suspects. The Panel has thus noted:

> "From the information made available, the Panel notes that there is no indication that witness statements were taken by the EULEX Prosecutors or that any credible forensic investigation was conducted by the Mission. Nor does the Panel have any indication of the lines of investigation that were pursued in this case or what efforts were made to identify suspects. No information was provided to the Panel to suggest that the EULEX Prosecutors had contacted potential sources of information (as, for instance, the British Government). Nor were statements apparently taken from the complainant, her daughter or any other close relative who might have had information of value to the investigation. There was apparently only one direct verbal contact between the complainant and the Mission, which also appears to have reacted only when prompted to do so by the complainant. Such a record is not such as to guarantee the procedural protection guaranteed by Article 2 and 3 of the Convention. It may also be said to have negatively affected the complainant's enjoyment of her rights under Article 8 and 13 of the Convention."[34]

In another case concerning the investigation to a prison riot, the Panel thus described an investigation which it found to fulfil the requirement of diligence:

> "99.In particular, the prosecutor analyzed the evidence given by 98 prisoners, 19 prison guards and four (4) international staff members who had been heard during various stages of the investigation by the police and the prosecutor.
> 100.Furthermore, the injured parties, including the families of the deceased prisoners, had the option of continuing the prosecution (see above, paragraph

[33] *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 64.
[34] See, e.g., *L.O. against EULEX*, 2014-32, 11 November 2015, para. 60.

35). To the Panel's knowledge the complainants did not do so. In any case, those proceedings would only have concerned the prisoners, not the prison authorities."[35]

From an institutional point of view, the general requirement of diligence also requires that the lines of authority and responsibility be sufficiently clearly laid out and identifiable. Confusion regarding the scope and nature of the responsibilities of different organs – of the State or Mission – are likely or capable of undermining the diligence of the investigative effort. The Panel's discussion on the Special Investigative Task Force (SITF) of EULEX is an extremely illustrative example for present purposes:

"67. As a preliminary matter, the Panel notes the lack of transparency and clarity that affects the legal regime under which the SITF operates. Whilst the Panel need not deal with this aspect of the matter in depth, it wishes to underline the general importance of transparency to the legitimacy and credibility of any investigative, prosecutorial or judicial enterprise.

68.The Panel is more particularly concerned by two issues that are of relevance to the effective fulfilment of its responsibilities in the present case. The first pertains to the status of the SITF within the EULEX mission and, in particular, whether they answer to the HoM. The second issue pertains to the question of whether the SITF enjoys some sort of primacy or exclusivity over cases that it opts to investigate.

69.Concerning the first issue and as noted above, the SITF is formally part of the Mission. As such, its activities come in principle within the competence of the Panel. The lack of transparency concerning its mandate, its legal basis and its institutional relationship to the rest of the Mission makes any review of its activities almost impossible for the Panel. The HoM's inability to provide more information in that regard leave the Panel with little alternatives but to draw certain inferences from this lack of information[...].

70.Concerning the second issue, the Panel has not been provided with any legal basis that would give the SITF primacy over the EULEX Prosecutors. Nor has the Panel received any indication of a legal text that would permit the EULEX Prosecutors to abandon an investigation if and when they have been notified of the SITF's intentions to investigate this case.

[35] *Sadik Thaqi against EULEX*, 2010-02, 14 September 2011, paras. 99-100.

71.Whilst the involvement of the SITF may ultimately assist the complainant's search for answers and justice, the Panel is of the view that, up to the present point, the involvement of the SITF has not demonstrably contributed to securing effective protection for her rights. Absent clearer and more detailed information about the SITF's actions and contribution to investigating this case, the Panel must draw the necessary inference that the complainant's rights have been and continue to be violated. This is true, in particular, of her (procedural) rights under Articles 2 and 3 of the Convention as well as her rights to have access to a remedy and to the full enjoyment of her family rights (Article 13 and 8 of the Convention, respectively)." [36]

f. Appropriate treatment of victims and witnesses

The first and core responsibility of investigating and prosecuting authorities is their duty to keep victims and witnesses safe from harm that could result from the investigation. The Panel has acknowledged this as it stated the following:

> "The HoM has rightly referred to the importance and need to guarantee a sufficient level of confidentiality to protect the integrity of ongoing investigative efforts. Confidentiality is warranted and particularly justified in a case such as the present one where the protection of witnesses and informants is paramount. In such a case, the Panel does not suggest that victims are entitled as a matter of right to the full or unrestricted disclosure of the entire investigative file nor to an exhaustive debriefing of the case."[37]

Also an integral part of the investigation process is the requirement that the competent authorities keep victims adequately informed of the course of the investigation. The Panel has noted the following in that regard

> "[...] the Mission's response to the complainant's efforts appear to have been far from adequate. Her many efforts resulted only in her receiving the bare minimum amount of information and only when she pressed for answers. Little

[36] *L.O. against EULEX*, 2014-32, 11 November 2015, paras. 67 et seq, and its references to *Al-Nashiri v. Poland*, Application no. 28761/11, judgment of 24 July 2014, para. 375; *Shamayev and Others v. Georgia and Russia*, Application no. 36378/02, judgment of 12 April 2005, para. 503.
[37] *L.O. against EULEX*, 2014-32, 11 November 2015, para. 72.

that is apparent to the Panel was done to keep her involved in or abreast of the process." [38]

The rationale behind this requirement is the fact that informing victims of the general aspects of their investigation will make them aware of the authorities' efforts and commitment to obtaining justice on their behalf.[39]

Sometimes these two requirements – the protection of victims and witnesses and the victim's right to information – might conflict with one another. In such cases it is the responsibility of the investigative authorities to balance the right and interest of victims to be kept informed of the progress with the necessary degree of confidentiality that an investigation may legitimately require.[40]

The propriety and adequacy of the investigative course taken is also to be assessed against its ability to contribute to and promote the right of victims to truth. The Panel has acknowledged the importance of this right in the context of serious rights violations, in particular where the exact circumstances of the violation or the fate of the victim remains uncertain.[41] Furthermore, where allegations of serious human rights violations are involved in the investigation, "the right to the truth regarding the relevant circumstances of the case does not belong solely to the victim of the crime and his or her family but also to other victims of similar violations and the general public, who have the right to know what has happened".[42]

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[38] See, e.g., *L.O. against EULEX*, 2014-32, 11 November 2015, para. 61. See also *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, in particular, paras. 65 and 70 ("70.In this particular case, the complainants do not appear to have been informed of the course of the investigation at any point and were only informed that it had been terminated once the investigation was closed. The complainants were not apparently interviewed by the authorities.").

[39] *L.O. against EULEX*, 2014-32, 11 November 2015, Disposition.

[40] See below.

[41] See, e.g., *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 67; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 19 October 2016, para. 61, and its references to L. Joinet, Special Rapporteur, Revised Final Report on Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political); E/CN.4/Sub.2/1997/20/Rev.1; 2 October 1997; *El-Masri v The Former Yugoslav Republic of Macedonia,* Application no. 39630/09, judgment of 13 December 2012, paras.191 and 193; *Cyprus v. Turkey*, Application no. 25781/94, judgement of 12 May 2014; Human Rights Council, Right to the Truth, A/HRC/12/L.27, 25 September 2009; Human Rights Chamber for Bosnia and Herzegovina, Case No. CH/01/8365, et al. (The "*Srebrenica* Cases"), Decision on Admissibility and Merits, 7 March 2003.

[42] *Al-Nashiri v Poland*, Application no. 28761/11, judgment of 24 July 2014, para.495. See also *Husayn (Abu Zubaydah) v Poland*, Application no. 7511/13, judgment of 24

g. Reasoned explanation for closing an investigation

As noted above, where the authorities decide to close or terminate an investigation, they must in principle provide sufficient reason for doing so. This – together with the participation of victims – is intended to create a minimum degree of transparency and public scrutiny over their actions. The Panel has noted the following in that regard:

> "[...] both the involvement of victims in the investigative process and the need for a reasoned explanation of the termination of that process are intended to create a sufficient degree of public scrutiny and a sense among victims that they have been treated fairly and that their search for justice has been diligently and effectively pursued by the authorities [...] Whilst the absence of adequate reasons in a particular case or a failure to involve victims might not mean that the authorities have failed to investigate a matter thoroughly, it might create that appearance for those involved. [...]"[43]

Referring to the 2005 ''Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Violations of International Human Rights and Serious Violations of International Humanitarian Law", the Panel noted that this obligation to provide reasoning provides the necessary assurance that the authorities have indeed investigated a matter effectively, promptly, thoroughly and impartially before closing it. In relation to this, the Panel has noted the following:

> "Furthermore, a requirement that a sufficiently reasoned explanation should be given for closing an investigation provides a necessary element of public scrutiny and accountability. [...] In 2005, the UN General Assembly adopted by consensus a set of ''Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Violations of International Human Rights and Serious violations of International Humanitarian Law.'' According to this instrument, the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided

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July 2014, para. 489; *El-Masri v The Former Yugoslav Republic of Macedonia*, Application no. 39630/09, judgment of 12 December 2012, para. 191; for judgments of the Inter-American Court of Human Rights, see e.g. *Anzualdo Castro v. Peru*, judgment of 22 September 2009, para. 119.

[43] *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 69, and its references to *Anguelova v. Bulgaria*, Application no. 38361/97, judgement of 13 June 2002, para.140. For a full reasoning see paras. 65 *et seq*. See also *I against EULEX*, case no. 2013-01, 27 November 2013, par 15.

> for under the respective bodies of law, includes, *inter alia*, the duty to "investigate violations effectively, promptly, thoroughly and impartially". [...] Verifying that an authority has complied with these elements in turn requires some form of explanation for its decision to close or terminate an investigation both on findings of fact and the provisions of substantive law applied [...]"[44]

And by adopting the course described above, the authorities comply with the rights of those concerned to the truth[45] and to have access to a remedy that is effective and not just theoretical. In this regard, the Panel has further noted the following:

> "Furthermore, a lack of reasoned explanation or inadequate reasons given for the conclusion or termination of an investigation may be incompatible with the effective protection of rights, in particular a victim's right to an effective remedy [...] This would be the case, for instance, if it deprives a victim of his or her right to an otherwise available remedy or deprive him or her in a concrete case of the effective use of that remedy." [46]

An "effective remedy", in this context, is indeed necessarily one that cares for the need to establish that the plaintiff's case was dealt with fairly, diligently and effectively.[47] From that point of view, "an explanation for terminating an investigation

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[44] See *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 67, and its references to *I against EULEX,* 2013-01, 27 November 2013, para. 15; Basic Principles, par 3(b); *Bouyid v Belgium*, Application no. 23380/09, Judgment of 28 September 2015, paras.114-123; Article 6(1) and (3) and Article 11 of the Directive 2012/29/EU of the European Parliament and of the Council, 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; and finally *I against EULEX,* case no. 2013-01, decision of 27 November 2013, para. 15.

[45] See, generally, *Desanka and Zoran Stanisić against EULEX*, 2012-22, 11 November 2015, para. 67 ("A reasoned explanation from the authorities is also consistent with the right of victims to be treated with dignity and with their right to the truth."). See also, *El-Masri v The Former Yugoslav Republic of Macedonia,* Application no. 39630/09, judgment of 12 December 2012, para.193. For judgments of the Inter-American Court of Human Rights, see e.g. *Velásquez Rodríguez v. Honduras*, judgment of 29 July 1988, para. 181; *Heliodoro Portugal v. Panama*, judgment of 12 August 2008, para. 244; *Anzualdo Castro v. Peru,* judgment of 22 September 2009, paras. 116-118.

[46] See, again, *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 68, and its references to *Hugh Jordan v The United Kingdom*, Application no. 24746/94, Judgment of 4 May 2001, in particular para. 123; *Rodríguez v. Uruguay*, Communication No. 322/1988, U.N. Doc. CCPR/C/51/D/322/1988 (1994), para.6.3.

[47] *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 69.

is essential to ensuring that the decision of the authorities is one that has not been based on any improper consideration, factor or assumption". [48] A reasoned explanation for closing an investigation is also consistent with the right of victims to be treated with dignity and with their right to the truth.[49]

iii. Duty of expeditiousness

As outlined further below, diligence in conducting an investigation into allegations of rights violations also implies a general obligation to act with the requisite promptness and reactivity. This requirement of expeditiousness applies to all stages and aspects of the investigation: its instigation, its conduct and its completion.

The requirement of expeditiousness is relative in nature: it depends on the circumstances of each case, in particular the challenges posed by the case, the difficulties to access witnesses or to collect information. But investigative challenges and difficulties do not warrant procrastination, delays or unjustifiable slowness in the performance of investigative duties. This is an expression of the broader right to proceedings without undue delay, which is guaranteed to all parties to the proceedings. The Panel has pointed out that –

> "The right to a fair and public hearing within a reasonable time as understood under Article 6 (1) of the Convention is designed to protect "*all parties to court proceedings….against excessive procedural delays …In addition, in criminal cases the right is designed to avoid that a person charged should remain too long in a state of uncertainty about his fate*" [...]"[50]

In evaluating, in a particular case, the reasonableness of time taken by the authorities, a number of factors have been identified are particularly important. The Panel has provided guidance in this evaluation as it noted the following:

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[48] *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 72.
[49] *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 67.
[50] See e.g. *Maksutaj against EULEX*, 2014-18, 12 November 2015, para. 57, it's quotes are from *Stogmuller v Austria,* Application no. 1602/62, judgment of 10 November 1969, para 5.

> "In considering the reasonableness of the length of proceedings, the Panel is required to examine the particular circumstances of the case and consider these factors as relevant to that evaluation: (1) the complexity of the case, (2) the conduct of the applicant, and: (3) the conduct of the competent administration [...]"[51]

Unjustified delays in commencing or closing an investigation, unexplained gaps or failures to follow up in a timely manner are all likely to raise questions from the point of this guarantee. To further clarify the criteria for this assessment the Panel has noted that –

> "[...] the submissions of both parties in regard to these criteria. In particular, the Panel takes note of the HoM's concession that nothing in the present case suggests that the conduct of the complainant prolonged the investigation of this case and that there is nothing to suggest that the case against him was particularly complicated. The Panel notes, furthermore, the submissions of HoM in which he acknowledges that there was a period between March 2010 and March 2013 where there were no attempts by the Prosecutor to advance and finalise the case and that the case was not concluded within a timeframe that EULEX might have wished for.
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> 60.In examining the reasonableness of the length of time taken to resolve this case, the Panel has not considered the initial period in which UNMIK was seized with the case. It has limited its consideration to the period of time when EULEX was responsible for the investigation of that case (from January 2009 to December 2014). The Panel notes, however, that the overall duration of the process against the complainant is relevant to evaluating the urgency with which the Mission acted in resolving this case.
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> 61.As set out above, the Panel acknowledges that when the case was handed over to the EULEX Prosecutor by UNMIK in January 2009 there was an initial attempt by the EULEX Prosecutor to withdraw the "inherited" indictment against the complainant with a view to expanding the investigation against him. After eventually succeeding in having the indictment withdrawn on 13 February 2009, the EULEX Prosecutor sent a request to the KP on 21 May

[51] *Maksutaj against EULEX*, 2014-18, 12 November 2015, para. 58, and its references to *Konig v FRG*, Application no. 6232/73, judgment of 28 June 1978, para. 99, *Pedersen and Baadsgaard v Denmark,* Application no. 49017/99, judgment of 17 December 2004, para. 45. See also, *Thomas Rüsche against EULEX*, 2013-21, 11 January 2017, para. 59-65.

2009 to search a room in Dubrava Prison for files and documents related to the investigation. The files were not retrieved for reasons set above. These facts were reported to the EULEX Prosecutor by the KP on 26 May 2009.

62.It appears that the next step undertaken in relation to these files and documents was in March 2010 when EULEX Police officers responded to a request from the EULEX Prosecutor for an update on the status of the documents and files. The EULEX Police reported that the whereabouts of the files and documents was unknown as they had been removed from the room in Dubrava Prison in the intervening period. It appears, and no evidence was presented to the contrary, that the EULEX Prosecutor did not take any further action to obtain these files and documents.

63.The Panel considers that the handling of this particular element of the investigation by the EULEX Prosecutor, absent any cogent explanation and absent any evidence of a follow up on this line of investigation, constitutes a serious deficiency of the investigation. This has affected the overall duration of the process without any apparent benefits for its resolution. The Panel is mindful of the case-law of the Court in this regard where it has found breaches of Article 6 (1) of the Convention on the basis of a single instance of unexplained delay of sufficient duration regardless of the overall length of the proceedings The Panel takes the view that these shortcomings of the investigation had a negative impact on the overall length of time it took to decide this case and contributed to a denial of the right of the complainant to a speedy resolution of the case against him.

[...]

67.The Panel also notes that it was only after the present complaint was communicated to the HoM that a review of the case was undertaken by the Office of the Chief EULEX Prosecutor. It was this review which ultimately led to a decision to request the Basic Court of Peje/Pec to issue a ruling dismissing the indictment against the complainant and terminating the criminal proceedings against him.

68.Based on the above and considering the particular circumstances of this case, the Panel is of the view that the proceedings (which lasted from January 2009 until 15 December 2014) were not conducted with the necessary level of diligence and expeditiousness. The case was left untouched for a long period of time and the complainant was left in the dark as to the status of his case despite repeated requests for clarification. These unjustified delays have

resulted in a violation of the complainant's right to a fair and public hearing within a reasonable time under Article 6 (1) of the Convention."[52]

An examination of the consequence of the delays on the parties involved might also provide relevant evidence of the reasonableness or otherwise of delays in the process. In this regard, the Panel has found as follows:

> "64.The Panel has also examined the consequences of these shortcomings for the accused [...] The Panel notes that the complainant set out very clearly to the EULEX Prosecutor, in his letter of 29 June 2011, that he was currently unable to get employment while under investigation and urged the EULEX Prosecutor to solve this matter. The Panel draws attention to the approach of the Court in relation to cases where the administration is required to apply particular expedition to the resolution of a case based on the prejudicial impact (including employment opportunities) for the complainant [...]
> 65.The Panel notes that despite the EULEX Prosecutor being put on notice of the complainant's difficulty *vis a vis* his unemployment, no response was provided to the complainant to his request for clarification and resolution of the matter. Not until 15 March 2013 did the EULEX Prosecutor issue a Ruling of Terminating the Investigation against H.N., a co-defendant of the complainant.
> 66.The Panel is mindful of the legal status of the proceedings which existed at that time in respect of the complainant and notes that the EULEX Prosecutor attempted to use a Ruling of Termination issued in respect of H.N. to give notice of his position in regard to the case against the complainant and another co-defendant, S.L., by notifying the Court "*about the fact that the indictment in this case has been withdrawn and refiling of the same indictment shall be closed according to Article 292(2), and the case against them shall be considered closed as well".* This, however, did not provide any sort of effective relief for the protection of right of the complainant under Article 6(1) of the Convention ."[53]

[52] See, for an illustration, *Maksutaj against EULEX*, 2014-18, 12 November 2015, paras. 59 et seq, and its references to *Bunkate v Netherlands,* Application no. 13645/88), judgment of 26 May 1993, para. 23; *Kudla v Poland,* Application no. 30210/96, judgment of 26 October 2000, paras. 124-131.
[53] See, e.g., *Maksutaj against EULEX*, 2014-18, 12 November 2015, paras. 64-66, and its references to *Frydlender v France,* Application no. 30979/96, judgment of 27 June 2000, paras 43-46; *Buchholz v FRG,* Application no. 7759/77, judgment of 6 May 1981; *Eastaway v UK*, Application no. 74976/01, judgment of 20 July 2004.

3. Involvement and participation of victims

As noted above, investigative authorities are required as a matter of human rights law to keep victims informed of the course of their investigation. In effect, this requires that the investigative authorities balance the right and interest of victims to be kept informed of the progress of the investigation with the necessary degree of confidentiality that an investigation may legitimately require. Subject to legitimate considerations of confidentiality and security, victims are entitled to be sufficiently involved in and informed of the process of investigation.[54]

Victims are not entitled as a matter of right to full or unrestricted disclosure of the entire investigative file nor to an exhaustive debriefing of the case. The Panel has acknowledged this:

> "72.The HoM has rightly referred to the importance and need to guarantee a sufficient level of confidentiality to protect the integrity of ongoing investigative efforts. Confidentiality is warranted and particularly justified in a case such as the present one where the protection of witnesses and informants is paramount. In such a case, the Panel does not suggest that victims are entitled as a matter of right to the full or unrestricted disclosure of the entire investigative file nor to an exhaustive debriefing of the case." [55]

However, as a matter of human rights law, victims of serious human rights violations, their close relatives as well as, to a lesser extent, the general public, are entitled to being sufficiently apprised of the tenor of an investigation.[56] This is intended to ensure, one the one hand, that the authorities act in all cases with the necessary diligence and care. It is also intended to ensure that the rights of victims are being

[54] *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 66, referring to *L.O. against EULEX,* 2014-32, 11 November 2015, paras. 60-61; *Ahmet Özkan and Others v. Turkey*, Application no. 21689/93, judgment of 6 April 2004, paras. 311-314, *Isayeva v. Russia*, Application no. 57950/00, judgment of 24 February 2005 paras. 211-214; *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, 7 July 2011, para. 167.
[55] *L.O. against EULEX*, 2014-32, 11 November 2015, para. 72.
[56] *L.O. against EULEX*, 2014-32, 11 November 2015, para. 73, referring as authority to the following cases: *Ahmet Özkan and Others v. Turkey*, Application no. 21689/93, judgment of 6 April 2004, paras. 311-314; *Isayeva v. Russia*, Application no. 57950/00, judgment of 24 February 2005, paras. 211-214; *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, 7 July 2011, para. 167.

duly accounted for.[57] Whilst the line is one that is difficult to draw in the abstract, the information provided to those most directly concerned by the investigation must be such as to enable them to satisfy themselves that the matter is being duly and properly looked into and that all relevant and reasonable efforts are being made to establish the fate of their relative and identify those responsible for it.[58] It must also be provided in timely fashion and in a proactive fashion by the authorities. The Panel has stressed the importance of the provision of information to an injured party:

> "74.Based on the available information, the Panel has come to the view that the Mission has failed to provide enough information to the complainant regarding this investigation and to do so in a manner and with the timeliness necessary and appropriate to the case. The Mission has not provided reasons justifying, for instance, that relatives could not have been regularly informed of advances in the investigation or why they could not be told, in general terms, what efforts were being made and how far the matter had progressed. Nor has the Mission explained its lack of activity in this matter nor its inability or failure to provide more information to the complainant. The Panel reiterates the importance that an investigative body is expected to act with a degree of activity in informing victim or close relatives of the victim and to show the necessary amount of care in dealing with the emotional distress that victims are likely to encounter when communicating with them. The conduct of the Mission in the present case falls short of that standard."[59]

Furthermore, in all contacts and communications with victims, the authorities must be mindful of the vulnerability of victims and their relatives and are therefore expected to treat them with respect, politeness and in accordance with their dignity. The Panel has underlined the importance of the manner in which the injured party is to be addressed:

> "62.The Panel must also underline the importance that investigative authorities should attach to the manner in which they communicate with victims of rights violations or their close relatives. In that regard, the suggestion by the EULEX Prosecutor that the complainant could not be represented in this matter and tone in which this was communicated to the

[57] *L.O. against EULEX*, 2014-32, 11 November 2015, para. 73.
[58] *L.O. against EULEX*, 2014-32, 11 November 2015, para. 73.
[59] Ibid, para. 74.

complainant is particularly unfortunate. The communication in question not only reflected a lack of tact. It was also incorrect from the legal point of view."[60]

[60] See *L.O. against EULEX*, 2014-32, 11 November 2015, para. 62.

4. List of relevant judgments and decisions

i. HRRP cases

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