



## **DECISION AND FINDINGS**

**Date of adoption: 5 December 2017**

**Case No. 2011-27**

**F. and Others**

**Against**

**EULEX**

**The text of the decision adopted by the Panel on 5 December 2017 was redacted by the Head of Mission, using her powers under the Operation Plan (OPLAN) for the European Union Rule of Law Mission in Kosovo. The Head of Mission considered that the original text of the decision could affect the operational effectiveness of the Mission.**



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The Human Rights Review Panel sitting on 5 December 2017 in the following composition:

Ms Magda MIERZEWSKA, Presiding Member  
Mr Guénaél METTRAUX, Member  
Ms Anna BEDNAREK, Substitute Member,

Assisted by  
Mr John J. RYAN, Senior Legal Officer

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

### **I. PROCEEDINGS BEFORE THE PANEL**

1. A complaint on behalf of the wife (hereinafter referred to as F.) and two members of the family of the late X.F. was lodged with the Panel on 14 November 2011. The Panel acceded to the complainants' wish not to have their names disclosed. They will be referred to hereafter as "F. and Others."
2. The Panel communicated the complaint to the Head of Mission (HoM) on 16 October 2012 and requested him to provide written observations on the admissibility and merits of the case.
3. On 17 January 2013, the HoM provided observations on the admissibility of the case.

4. On 9 April 2013, an officer designated by the Mission provided an oral presentation to the Panel concerning certain facts relevant to the resolution of the complaint.
5. On 15 July 2015, the Panel provided the complainants' lawyer with a copy of a redacted version of this presentation together with a request for his comments. The complainant's reply was submitted to the Panel on 27 July 2015.
6. On 30 October 2015, EULEX presented a report of a review of the case to the Panel which had, in the meantime, been carried out.
7. On two occasions in 2016, the HoM made further submissions on the case, drawing the Panel's attention to the fact that the submissions were considered EU-classified and/or could adversely affect the criminal proceedings which were still pending at that time.
8. The Panel has therefore been presented with the Mission's submissions, the full text of which it could not transmit to the complainant for his comments. In its admissibility decision of 13 June 2017 the Panel examined procedural issues arising in the case in this connection.
9. It satisfied itself that the procedure it followed has maintained the necessary balance between the complainants' procedural right to argue their case effectively and the need to safeguard the confidentiality of certain aspects of the Mission's operation in sensitive areas (see the admissibility decision of 13 June 2017 in the present case referred to above, paras. 11-21).
10. In this decision the Panel stressed in particular that it had recourse to the procedure by which it was given full access to the information provided by the Mission, including information which was considered to be too sensitive to be disclosed to the complainant and to the public in view of the risk to operational safety. While the Panel is not at liberty to disclose certain elements of this information to the complainant or to make those elements public, this fact does not prevent the Panel from conducting a thorough examination of the issues involved in the case. Furthermore, the Panel has satisfied itself that its inability to disclose that information to the complainant in its entirety would not prejudice its ability to seek an effective remedy before the Panel. Hence, the Panel concluded that the full submission of the Mission was examined in detail in the admissibility decision in accordance with fair hearing standards, that it was not authorised to disclose the full submission to the complainant and that it could discharge its functions on that basis.
11. The Panel adopted a similar procedural approach previously in a case where the HoM requested that part of the information provided to the Panel should remain confidential. The HoM provided the Panel with a shortened, redacted, version of his submissions for the purpose of informing the complainant and the general public of the tenor of his submissions. The Panel thus satisfied itself that the complainant has not been prejudiced by the fact that he only received a summarized version of the HoM's submissions (see *Maloku v. EULEX*, no. 2015-04, 10 January 2017, para. 5).
12. The same procedural considerations are applied by the Panel in the review of the instant case in the examination of the merits.

## II. SUMMARY OF THE FACTS

13. The facts of the case established on the basis of the parties' submissions made in the procedure as described in paras. 1-12 above, can be summarised as follows:
14. X.F. was a witness for the prosecution in a major criminal case, which concerned serious charges that were brought against ten (10) individuals which was being examined by the Basic Court of Pristina.
15. X.F. was attacked and injured by unidentified persons in the yard of his house in 2009. There were altogether six (6) attempts on his life by perpetrators who remain unknown.
16. X.F., F. and their children were admitted into the EULEX witness protection programme in December 2009. The complainants submit that their conditions while in the program were very difficult.
17. The HoM denied these allegations.
18. In December 2010, the family left the programme voluntarily, apparently because of the pressure exerted on X.F. by his wife who was unhappy about the life the family was leading while under the protection of the officers of the protection program. Despite leaving the protection program, X.F. still wished to give testimony in the case.
19. On an unspecified date in 2011, a risk assessment was carried out by EULEX. It was found that the risk of attack against X.F. and his family remained high.
20. In the early months of 2011, a number of arrests were effected in connection with the criminal case referred to above.
21. It was arranged for X.F. to travel to an EU Member State at short notice. A EULEX Prosecutor informed the authorities of the EU Member State thereof at a point in time when X.F. was on his way there. A certain amount of money was assigned from the Mission's funds to finance X.F.'s stay in the EU Member State where he had family ties.
22. On an unspecified date, the authorities of the EU Member State were informed of X.F.'s presence in the EU Member State.
23. In July 2011, X.F. returned to Kosovo where he gave statements at the pre-trial hearing in the above mentioned case. He was subsequently re-admitted to the EULEX witness protection program in order for him to receive financial and other assistance from the program.
24. Shortly afterwards he returned to the EU Member State (accompanied by EULEX Kosovo).
25. On 28 September 2011, X.F. died in the EU Member State. An investigation carried out by the authorities of the EU Member State determined that he had committed suicide.

26. The criminal proceedings against the defendants in the criminal case referred to above were subsequently conducted before the Kosovo courts. In 2013 the Basic Court of Pristina rendered its judgment. All defendants were acquitted.
27. The EULEX Prosecutor appealed the judgement. In 2016 the Court of Appeal dismissed the appeal.
28. Subsequently, the EULEX Prosecutor at the Office of the State Prosecutor filed a request for protection of legality against this judgment. In 2017, the Supreme Court of Kosovo dismissed the Prosecutor's challenge.

### **III. COMPLAINTS**

29. The complainants submit that the psychological pressure that X.F. was subjected to, as well as his general treatment by EULEX and his isolation from his family while in the witness protection programme and, later on, in the EU Member State, led him to commit suicide. It is alleged that EULEX was aware of his mental state but failed to take adequate measures to prevent his death. The complainants request that the persons responsible for the alleged violations of their family rights and X.F.'s death be brought to justice.

### **IV. THE LAW**

30. The complainants submit that EULEX was aware of his mental state but failed to take adequate steps to prevent his death. They request that the persons responsible for the alleged violations of the F. family rights and X.F.'s death be brought to justice. The complainants further complain that the Mission failed to take adequate measures to protect X.F.'s life and it failed to investigate the circumstances that led to his death.
31. The HoM disagreed.
32. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept Paper of 29 October 2009 on the establishment of the Human Rights Review Panel. The Panel has repeatedly held that the European Convention on the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the International Covenant on Civil and Political Rights which set out the minimum standards for the protection of the human rights to be guaranteed by public authorities in all democratic legal systems are of particular importance to the work of the Panel.
33. The Panel declared admissible the complaint made by the complainants under Articles 2 and 3 of the Convention which, in so far as relevant, provide that:

#### Article 2

*"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. [...]"*

### Article 3

*“No one shall be subjected to ... inhuman or degrading treatment ...”*

34. In its admissibility decision in the present case, the Panel declared that the complaints related to the facts concerning the F. family’s participation in the witness protection programme were inadmissible as they fell outside the six-month time-limit which is provided for by Rule 25 para. 3 of its Rules of Procedure. The Panel further reserved the right to take those facts into consideration only as background information to the case in the context of the examination of its remaining aspects. The Panel will be guided by the said admissibility decision in its examination of the case at the present stage of the proceedings.

### Article 2 of the Convention

35. The first sentence of Article 2, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of democratic societies, enjoins the State not only to refrain from the “intentional” taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, among many other authorities, European Court of Human Rights (ECtHR), *Dodov v. Bulgaria*, no. 59548/00, § 79, 17 January 2008).
36. The State’s positive obligation under Article 2 has been found to be engaged in various circumstances, such as in the health care sector, be it public or private, as regards the acts or omissions of health professionals (see ECtHR, *Dodov v. Bulgaria*, cited above, §§ 70, 79-83 and 87, ECtHR 2008- ...; *Byrzykowski v. Poland*, no. 11562/05, §§ 104 and 106, 27 June 2006) as well as in respect of the management of dangerous activities (see ECtHR, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECtHR 2004-XII) and ensuring safety on board a ship (see ECtHR, *Leray and Others v. France* (dec.), no. 44617/98, 16 January 2001) or on building sites (see ECtHR, *Pereira Henriques and Others v. Luxembourg* (dec.), no. 60255/00, 26 August 2003). In certain circumstances, positive obligations may attach to a State to protect individuals also from risk to their lives which result from their own action or behaviour (see ECtHR, *Bone v. France* (dec.), no. 69869/01, 1 March 2005; *Kalender v. Turkey*, no. 4314/02, §§ 42-50, 15 December 2009). The Court further held that the above list of circumstances is not exhaustive.
37. This guarantee and the procedural requirements attached thereto have already been found by the Panel to be in principle applicable to the Mission and therefore relevant to verifying its compliance with the fundamental rights of complainants (see, e.g., A, B, C and D Against EULEX, Case No. 2012-09, 2012-10, 2012-11 and 2012-12, Decision and Findings, 20 June 2013; H & G Against EULEX, Case No. 2012-19 & 2012-20, Decision and Findings, 30 September 2013; *Sadiku-Syla against EULEX*, 2014-34, Decision on Admissibility, 29 September 2015; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, Decision on Admissibility, 30 September 2015; *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015; *Sadiku-Syla against EULEX*, 2014-34, Decision and Findings, 19 October 2016, paras. 47; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, Decision and Findings, 19 October 2016). The Panel has made it clear, however, that obligations attaching to a state are not necessarily applicable to the same extent as those applicable to a rule of law mission so that the specificities of the latter, insofar as relevant, should be

taken into account for when assessing the mission's compliance with its human rights obligations (see, generally, *L.O. against EULEX*, 2014-32, Decision and Findings, cited above, paras. 43 and 45, and references to the Panel's case-law contained therein).

38. The Panel reiterates that Article 2 of the Convention may imply an obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see ECtHR, *Osman v. the United Kingdom*, judgment of 28 October 1998, Reports 1998-VIII). To find a violation of the positive obligation to protect life, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of identified individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected of them to avert that risk (see, among other authorities, ECtHR, *Osman*, cited above, para. 116).
39. As to the procedural obligations of the State, Article 2 of the Convention also obliges the State to carry out an effective investigation into alleged breaches of its substantive limb (see ECtHR, *Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII, and *Giuliani and Gaggio*, [GC], no. 23458/02, § 298, ECtHR 2011). The question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigative work (see ECtHR, *Dobriyeva and Others v. Russia*, no. 18407/10, § 72, 19 December 2013). These standards have, again, been accepted by the Panel as being in principle applicable to the Mission (see, e.g., *Sadiku-Syla against EULEX*, 2014-34, Decision and Findings, cited above, para. 36; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, Decision on Admissibility, cited above).
40. In order to be "effective" as this expression is to be understood within the context of Article 2 of the Convention, an investigation must firstly be adequate (see ECtHR, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II). That is to say that it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible. The obligation to conduct an effective investigation is an obligation not of a result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue (see ECtHR, *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014, and *Sadiku-Syla against EULEX*, 2014-34, Decision and Findings, 19 October 2016, para. 36).
41. A requirement of promptness and reasonable expedition is implicit within this context (see ECtHR, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011; *Sadiku-Syla against EULEX*, 2014-34, Decision and Findings, cited above, para. 36; *L.O. against EULEX*, 2014-32, Decision and Findings, cited above, para. 46; see also United Nations Mission in Kosovo (UNMIK), Human Rights Advisory Panel (HRAP) decision in cases nos. 248/09, 250/09 and 251/09, 25 April 2013, para. 80).
42. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests (see, among other authorities, ECtHR, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, ECHR 2001 III and *L.O. against EULEX*, 2014-32, Decision and Findings, cited above, paras. 61 *et seq.*).

43. The Panel has already had occasion to hold, in cases concerning obligations of public powers arising in connection with the right to life, that the EULEX mission is not a State and that its ability to guarantee the effective protection of human rights cannot be compared in all relevant respects to what may be expected of a State (see *A, B, C. and D. against EULEX*, cited above, compare also HRAP Panel decision in cases nos. 248/09, 250/09 and 251/09, cited above, para. 42). In the present case, in relation to the operational aspects of the responsibility of EULEX with regard to its executive mandate, the Panel would not expect the Mission to have recourse to a full investigation such as would have been called for in cases of alleged missing and murdered person crimes (see *L. O. against EULEX*, referred to above). However, the Panel is of the view that, in circumstances where an important witness in a criminal case dies, which criminal case was prosecuted by EULEX prosecutors, whether the death was as a result of suicide or in other suspicious circumstances, a prompt internal enquiry by EULEX to establish the course of events, with meaningful involvement of the family of the deceased, would be the expected minimum procedural standard that would be compatible with the requirements of Article 2 of the Convention.
44. The Panel would furthermore stress the critical importance of witnesses to the functioning of the criminal justice system (see, generally, Council of Europe, Committee of Ministers, Recommendation (2005)9 of the Committee of Ministers to Member States on the protection of witnesses and collaborators of justice, 20 April 2005; see also *Maloku against EULEX*, referred to above, para. 24).
45. In order for witnesses and other “collaborators of justice” to contribute to that system, their fundamental rights need to be adequately safeguarded so that their involvement in the process does not expose them to any risk of harm. The Panel has already emphasised how important it is for the competent investigative and prosecutorial authorities to ensure that witnesses in criminal cases and collaborators of justice are protected from harm and from other negative consequences arising from their involvement in criminal proceedings. In *W. against EULEX* the Panel noted that the responsibility of the authorities to protect witnesses may imply in some cases a positive obligation on their part to take measures to ensure the safety and security of witnesses although this obligation must not impose an impossible or disproportionate burden onto them (*W. against EULEX*, no. 2011-07, 10 April 2013, para. 48 and *Maloku against EULEX*, referred to above, para. 25).
46. Turning to the circumstances of the present case, the Panel notes that, as regards the substantive requirements of Article 2 of the Convention, it has not been argued, let alone shown, that the complainants’ father and husband died as a result of any criminal act on the part of third parties or as a result of the unlawful or excessive use of force by any public authorities. The outcome of the criminal investigation conducted by the authorities of the EU Member State (see para. 26 above) to the effect that he had committed suicide, was not challenged in any way, nor was it shown to lack credibility.
47. The Panel further notes that the Mission failed in some respects to act with the requisite diligence in the particularly sensitive circumstances of this case. In particular, it has not been shown to the Panel’s satisfaction that the Mission had carefully considered whether its actions in respect of X.F. were in compliance with the legal framework which governs the exercise of its executive mandate (see in this respect paragraph 50 below). The Panel was not satisfied, however, that these shortcomings, individually or as a whole, were a material or substantive contributing factor to X.F.’s decision to take his own life.



48. In this connection, the Panel acknowledges that Article 2 of the Convention imposes certain positive obligations on public authorities in respect of the protection of life of vulnerable persons in State custody or under the State's responsibility, such as detainees, patients of closed medical institutions or persons in military service who are not free to leave (see, for persons in custody, ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 131, ECHR 2014; for patients of medical institutions - *Dodov v. Bulgaria*, cited above and for persons in compulsory military service - *Beker v. Turkey*, no. 27866/03, §§ 41-43, 24 March 2009). However, this provision does not guarantee, *per se*, a right to substantive and ultimately effective protection against suicide of a person at liberty; still less in the situation concerned in the present case, namely of a person remaining outside of Kosovo, in a territory of one of the Sending States; hence, outside of reach of the Mission.
49. It follows that there has been no violation of Article 2 of the Convention under its substantive limb.
50. However, it remains for the Panel to examine whether EULEX has met its procedural obligations arising under the same provision of the Convention.
51. It is noted in this context that it has not been argued, let alone shown, that any internal investigation was instituted by EULEX in an automatic and timely manner in order to establish the facts and also to, possibly, determine any responsibility which might arise therefrom for the Mission upon its being informed of the death of X.F. by suicide. It is not for the Panel to indicate the procedures which, in the internal architecture of the Mission, would have best served that purpose. The Panel was merely informed that a review was held on unspecified dates, a considerable period after X.F.'s death (see para 6 above). It was not argued or shown that this review was launched by the Mission itself automatically upon its learning of the death of X.F. and that the family was in any way informed of, or involved in this review.
52. There has therefore been a violation of the procedural limb of Article 2 of the Convention.

### **Article 3 of the Convention**

53. The Panel notes that this provision, in so far as it prohibits inhuman or degrading treatment, can also be breached by public authorities in the absence of any violation of a person's physical integrity. For example, the Court found violations of this prohibition with respect to a detainee whose optical glasses were taken away for a period of three months (see, ECtHR, *Slyusarev v. Russia*, no. 60333/00, 20 April 2010); in respect of prisoners who were ordered to undress in front of prison guards of the opposite sex (ECtHR, *Valasinas v. Lithuania*, no. 44558/98, 24 July 2001); in case of a woman who was stripped naked in a sobering-up centre by orderlies who were men (see ECtHR, *Wiktorko v. Poland*, no. 14612/02, 31 March 2009) or in respect of families who were left for a long time in situations of uncertainty as to the fate of their closest relatives who had disappeared in situations of non-international armed conflict and in which case the authorities did not reply adequately to their enquiries (ECtHR, *Khamila Isayeva v. Russia*, no. 6846/02, 15 November 2007).
54. Similarly, in the present case, it is not an alleged infringement of X.F.'s physical integrity which is at stake, but rather the set of circumstances in which he found himself prior to his death and the adverse situation of his family resulting therefrom.

55. The Panel notes that the complainants' husband and father respectively was a witness in a major criminal case. The risks that this entailed were abundantly clear from the fact that there were six (6) attempts on his life by unknown perpetrators (see paragraph 15 above), and by the Mission's own assessment of the risks to which he was exposed. As a result, the complainants and X.F. were admitted into the witness protection programme operated by EULEX (see paragraph 16 above).
56. The Panel takes no issue with this decision. It notes, as a factual background to the issues concerned at the present stage of the proceedings, the complainants' submission made at the admissibility stage of the present case that the family's participation in the program was difficult for them as they felt isolated and as their daily life was disrupted, (see admissibility decision of 13 June 2017, para. 47). It was for this reason that the family ultimately left the programme, whilst the criminal case remained pending. The risk of attack against the family, as assessed by EULEX shortly after they had left the programme in December 2010, remained high. In assessing the overall conduct of the Mission and the diligence exercised in this matter, the Panel also takes into consideration the shortcomings noted above, (see paragraphs 18 & 19 above).
57. The Panel therefore accepts that X.F. was under severe stress for fear of his family members' lives and his own life for a considerable period, both during the time he spent under the witness protection programme and thereafter. Whilst this situation was no doubt triggered, for the most part, by his status as a witness in a sensitive criminal case, the Panel has been satisfied that the manner in which the Mission acted in this matter would have also contributed to X.F.'s overall well-being.
58. It is against this background that a meeting was held in March 2011, before arrests were affected in the criminal case. X.F. left Kosovo shortly afterwards on the basis of a decision given – or approved of by – this meeting.
59. The Panel appreciates that this decision was taken with a view to address the question of ensuring at least minimum security for X.F., who wished to give testimony during the criminal proceedings. It is also well aware of the fact that the Mission was confronted with the difficult operational choice of the balancing of the interests of an effective prosecution in a major criminal case as against securing the testimony of an important witness whilst ensuring the security of that witness. In that regard, the Panel finds that the steps taken were intended to protect X.F. from harm. The Panel takes issue, however, with the manner in which the Mission sought to achieve this aim.
60. In this connection, the Panel notes that EULEX must have been aware – or should have been aware at this time – that X.F. had already been under considerable pressure for a substantial period of time, both fearing for his own life and the lives of his family. The matter of securing the safety of a witness who had initially been taken into the witness protection program and then decided to leave it of his own volition, was known to EULEX for a substantial period of time before the arrest of the suspects in March 2011. It has not been shown to the Panel that the EULEX prosecution authorities or the other authorities within the Mission examined in advance the possible steps to be taken with regard to the safety of that witness and his family in the event that the criminal proceedings progressed and the case reached the judicial stage. Nor was it shown that adequate and sufficient efforts were made to carry out a strategic planning exercise in respect of their safety in the longer term perspective. It could have been expected at that time that the judicial

proceedings would last for a considerable period of time, if only because there were up to ten (10) accused persons in the criminal case.

61. Importantly, the Panel is of the view that such an exercise should have been carried out with due regard being had to the specificity of the Kosovo environment, characterised by a close knit society where the provision of testimony to the courts may be perceived first and foremost as an abrogation of the “duty of loyalty” owed to criminal groups or family clans. The repeated attempts on the life of X.F. only added to the urgency of the matter and rendered more evident the risks to which he was exposed
62. It has not been shown or argued either that X.F. was duly informed by EULEX about the risks that the decision to send him abroad involved for him or for his family.
63. Nor has it been shown that the Mission carried out a risk assessment to verify whether the decision to send X.F. abroad was compatible with the legal framework which governed the exercise of the Mission’s executive mandate, and if such an exercise had been carried out, what were the results of the risk assessment.
64. The Panel is well aware that the unlawfulness of the conduct of public authorities does not automatically make the authorities responsible for a breach of Article 3 of the Convention (see ECtHR, *Slyusaryev v. Russia*, para. 34). However, this apparent failure to address the lawfulness issue is an element of the approach to the handling of witness security issues in the present case which the Panel cannot but qualify as cavalier.
65. The same criticism applies regarding the travel arrangements which were made by the Mission in order to send X.F. abroad, at a short notice. The failure to keep the authorities of the EU Member State updated on the situation in a timely manner, cannot be said to serve the purposes of ensuring the safety of X.F.
66. Furthermore, it was not explained to the Panel’s satisfaction whether any specific arrangements concerning his safety in the EU Member State were requested by the Mission, let alone effectively put in place, or whether any specific resources were put at his disposal, apart from “a certain amount of money” which was granted to X.F. from the Mission’s resources (see paragraph 22 above), either during his first period in the EU Member State from March to early July 2011, or during the second period from an unspecified date in July or August 2011 until his death on 28 September 2011.
67. Additionally, it has not been shown whether any specific steps were taken, after March 2011 when X.F. left Kosovo and in the months before his suicide and thereafter, to establish and address in any sense the situation and security of his family.
68. In summary, X.F. was exposed to a long period of fear, uncertainty and anguish with regard to his own fate and that of his family, without the benefit of adequate resources and appropriate assistance. This resulted in a situation of great vulnerability, both for him and his family.
69. The Panel reiterates in that regard that whilst circumstances attaching to his status as a witness in a sensitive criminal case seriously affected his life situation, the Mission’s actions were also highly relevant to X.F.’s overall state of well-being and that of his family, in so far as they could legitimately feel anguish and fear for his life and security. Having regard to the above, the Panel concludes that it has not been shown that, in the balancing

exercise which is crucial for the issues involved in X.F.'s situation as a witness who was exposed to a threat to his safety and life as well as his family's safety and lives, sufficient consideration was given to their security and well-being.

70. There has therefore been a violation of Article 3 of the Convention both in respect of X.F. and the complainants.

**FOR THESE REASONS, THE PANEL, UNANIMOUSLY,**

- *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb;
- *Finds* that there was a violation of Article 2 of the Convention in its procedural limb;
- *Finds* that there has been a violation of Article 3 of the Convention in so far as it prohibits inhuman or degrading treatment;

**DECLARES** that in the light of the above findings of fact and law it is appropriate to make recommendations to the Head of the Mission and

**RECOMMENDS THE FOLLOWING REMEDIAL ACTION:**

- The HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainants' rights attributable to the acts and omissions of EULEX in the performance of its executive mandate;
- The HoM should disseminate the present decision on the substance of the case to the Mission's staff whose tasks are relevant for the subject-matter of the present case, with a view to provide guidance on the applicable human rights standards.

For the Panel,

John J. RYAN  
Senior Legal Officer



Magda MIERZEWSKA  
Presiding Member