



## **DECISION and FINDINGS**

**Date of adoption: 12 November 2015**

**Case No. 2014-18**

**Fitim Maksutaj**

**Against**

**EULEX**

The Human Rights Review Panel sitting on 12 November 2015, with the following members present:

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

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

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

Having deliberated, decides as follows:

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

1. The complaint was registered on 19 March 2014. The complainant submitted additional information on 21 October 2014.

2. On 17 November 2014, the Panel decided to give notice of the complaint to the Head of Mission (HOM) of EULEX Kosovo, inviting him to submit written observations on the complaint. The observations of the HOM were received on 18 February 2015 after which they were translated and communicated to the complainant for his additional observations.
3. On 27 May 2015, the complainant submitted additional observations in response to the observations of the HoM.
4. The additional observations submitted by the complainant were communicated to the HoM by the Panel on 19 August 2015.

## **II. THE FACTS**

5. On 11 October 2006, an International Prosecutor of UNMIK issued a Ruling on Initiation of an Investigation against the complainant and six other co-defendants for the offences of: (i) abusing official position or authority (Article 339 of the 2004 Criminal Code of Kosovo (CCK) and, (ii) falsifying documents (Article 332 of the CCK), for irregularities surrounding the management of prison cash accounts in Dubrava Prison.
6. On 29 November 2006, the complainant was arrested based on the Order of Arrest issued by a Pre-Trial Judge on 28 November 2006. On 29 November 2006, the Prosecutor of the District Prosecution Office of Peje/Pec, under SEC No. 132/06, applied for detention on remand against the complainant and one other co-defendant, S.L. The Prosecutor qualified the criminal offences as misappropriation in office (Article 340 (1) and (3) CCK), and falsifying documents (Article 332 CCK). On 29 November 2006, the Pre-Trial Judge of the District Court of Peje/Pec rejected the application for detention on remand and instead issued a Restrictive Movement Order against the complainant, prohibiting him from approaching a specific place and person (Article 272 Kosovo Criminal Code of Procedure 2004 (KCCP). This Order was also issued against co-defendant S.L. This measure was extended by the Pre-Trial Judge on several occasions (until 28 February 2007, 28 March 2007, 28 May 2007, 28 July 2007, 28 August 2007, 28 October 2007, 28 November 2007, 28 January 2008 and 28 February 2008).
7. On 18 February 2008, the Panel of the District Court of Peje/Pec, *proprio motu* terminated the Restrictive Measure Order against the complainant.
8. On 28 February 2008, the Prosecutor appealed the ruling of the District Court which was granted by a Panel of Judges of the Supreme Court on 28 July 2008. The restrictive movement measures were

reinstated against the complainant and co-defendant S.L. for one month until 29 August 2008.

**Initial Investigation of the Case by UNMIK 2006-2008**

9. On 4 May 2007, the International Prosecutor issued a ruling on expansion of the investigation in order to initiate an investigation against another suspect, H.N., thus bringing the number of suspects to eight.
10. On 28 May 2007, the Pre-Trial Judge extended the period of investigation against the complainant and co-defendant S.L. for the criminal offences set out in Articles 339 and 332 of the CCK until 11 October 2007. The application was granted in response to an application of the Prosecutor submitted on 6 April 2007 and subsequently amended on 4 May 2007. The International Prosecutor, in her amended application, informed the Court that five other co-defendants in the case were no longer considered as suspects but witnesses to the case.
11. On 24 July 2007, the Prosecutor suspended the investigation against suspect H.N.
12. On 27 August 2007, the Pre-Trial Judge, acting upon an application of the Prosecutor, amended the Order of Extension of the investigation against the complainant with regard to the criminal offences of aggravated misappropriation in office (Article 340(1) and (3) CCK) and falsifying documents (Article 332 (1) and (3) CCK).
13. On 26 September 2007, the Prosecutor interviewed the complainant as a suspect for the criminal offences set out in Articles 340 (1) and (3) and, 332 (1) and (3) CCK. S.L. was also interviewed by the Prosecutor as a suspect on 25 September 1 and 3 October 2007.
14. On 1 October 2007, the Prosecutor amended his initial ruling on the initiation of an investigation against the complainant and S.L. in order to include the criminal offences as set out in Art. 340(1) and (2) of the CCK.
15. On 4 October 2007, the Prosecutor recommenced investigation against H.N. in order to include the criminal offence of aggravated misappropriation in office as set out in Article 340 (1) and (3) CCK. On 5 October 2007, the Prosecutor applied for an Order for Arrest, Wanted Notice, International Wanted Notice and Detention on Remand against H.N.
16. On 26 October 2007, the Pre-Trial Judge extended the period of investigation until 11 April 2008, based upon an application by the Prosecutor.

17. On 12 November 2007, the International Pre-Trial Judge issued an Order for Arrest, Wanted Notice and an International Wanted Notice against H.N.
18. On 14 February 2008, an indictment against the complainant was filed by the Prosecutor with the District Court of Peje/Pec (PPQ No. 37/07). On 6 April 2008, copies of the case file were handed over to Counsel for the complainant by the Office of the International Prosecutor in accordance with Article 307 of the Kosovo Code of Criminal Procedure (KCCP).

#### **Investigation of the Case by EULEX 2009 - Present**

19. The case files pertaining to the above cases were handed over by UNMIK International Prosecutors to the EULEX Prosecutors sometime between 1 January and 4 February 2009. At that point in time, the cases against the complainant and S.L. were awaiting confirmation of charges in relation to the alleged criminal offences provided in Articles 340 (1) and (3) and, 332 (1) and (3) CCK. In addition, there was an outstanding Order of Arrest, Wanted Notice and Request for International Wanted Notice against H.N.
20. On 4 February 2009, EULEX Prosecutors filed a request to the Confirmation Judge of the District Court Peje/Pec asking for the return of the prosecution case files, referring to Articles 304, 306, 326 and 376 of the KCCP (Article 304-Filing of the indictment; Article 306-First examination of the indictment and its compliance with Article 305; Article 326-withdrawl of the indictment before the main trial; Article 376-amendment and extension of the indictment).
21. On 9 February 2009, a EULEX Confirmation Judge dismissed the request of the EULEX Prosecutors for the return of the case files on the basis that the application was not in conformity with Kosovo law (Ruling KAQ No. 45/08).
22. On 11 February 2009, the EULEX Prosecutors filed another submission with the District Court of Peje/Pec in response to the previous ruling of the Confirmation Judge, stating that they were withdrawing the indictment and requesting the return of the case files in order to reassess the cases and to conduct additional investigations with a view to preparing a new indictment.
23. On 13 February 2009, the Confirmation Judge issued an Order for the case files to be returned to the EULEX Prosecutors and confirming the withdrawal of the existing indictment.
24. On 21 May 2009, the Prosecutor requested the Regional Kosovo Police Directorate in Peje/Pec to enter a room in Dubrava Prison and make an inventory of the files and material relevant to the case, to store those materials at the Kosovo Police ("KP") and to report to the

Prosecutor on the actions undertaken. The room in question was sealed by the *Guardia di Finanza* sometime in 2006.

25. On 26 May 2009, KP reported that investigators alongside four EULEX Police Officers and one interpreter went to Dubrava Prison. It was necessary for the door to the room to be forced open as it was locked and no keys were available. On entering the room, it was discovered that a window was open and there were a considerable number of dead and living doves. The officers could see that there were approximately 60-70 files with documents that had been sealed by the *Guardia di Finanza* but it was not possible to retrieve these files because of the condition of the room and to do so would have been a serious health risk for the officers concerned. After taking photographs of the scene, the officers, on advice of the EULEX Prosecutor, did not touch anything and the files remained at the scene.
26. On 26 March 2010, EULEX Police Officers reported to the EULEX Prosecutor that they had monitored the opening of the sealed room in Dubrava Prison on the 26 May 2009. They also stated that the room in question had subsequently been cleaned by a professional cleaning company and that the cleaning of the room was supervised by KP officers from Istog/Istok Police Station. The EULEX Police officers stated that their colleagues in the KP Anti-Corruption Unit were not informed in advance of the cleaning of the room and only learned about it subsequently. The EULEX Police officers stated that this was in clear breach of the agreement made between the Dubrava Prison, the EULEX Prosecutor and the EULEX police officers.
27. On 4 May 2010, the complainant wrote to the EULEX Prosecutor with a request for information on the status of his case, which was registered as a complaint by EULEX (Complaint Registration No. 132/2010).
28. On 6 July 2010, the EULEX Prosecutor responded to the complainant stating that the case was under review and subject to legal proceedings. The EULEX Prosecutor advised the complainant to seek independent legal advice "*given the nature of the case without further delay*". In addition, the EULEX Prosecutor informed the complainant that his appointed defence counsel "*would be contacted in due course when further developments arise in this case*".
29. On 29 June 2011, the complainant again contacted the EULEX Prosecutor complaining that, since the filing of the indictment by the International Prosecutor in February 2008 he had not been informed about the status of the case. In his communication, the complainant mentioned that he had been given information that the indictment had been withdrawn. He requested the assistance of the EULEX Prosecutor in resolving this matter as he was unable to get employment without documentary evidence showing that he was not under investigation. The case was registered as a complaint by EULEX (Complaint Registration No. 137/2011).

30. On 15 March 2013, the EULEX Prosecutor terminated the investigation against H.N. for lack of reasonable suspicion. In this ruling, the EULEX Prosecutor notified the EULEX Pre-trial Judge... *“about the fact that the indictment [against the complainant and S.L.] “has been withdrawn and re-filing of the same indictment shall be closed according to Article 292(2), and the case against them considered closed as well”.*
31. On 15 December 2014, the Basic Court of Peje/Pec issued a ruling dismissing the indictments against the complainant and S.L. (KAQ No. 45/08 dated 15/12/2014. Ruling on Indictment PPQ NR-37/07, filed with the Court on 14/02/2008).

### **III. COMPLAINTS**

32. The complainant requests from a “EULEX Court” to be informed about the status of his case and, in particular, confirmation that the investigation against him has been terminated. The complainant submits “that he needs a decision from the EULEX Court that the investigations on his case have been terminated” in order to be able to request to be reinstated in his previous position.
33. The complainant alleges a violation of his rights as foreseen by Article 6 of the European Convention on Human Rights.

### **IV. RELEVANT APPLICABLE LAW**

#### **Joint Action**

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

#### **Article 2 Mission Statement**

EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices.

EULEX KOSOVO, in full cooperation with the European Commission Assistance Programs, shall fulfil its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities.

#### **Article 3 Tasks**

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



- (a) monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities;
- ...
- (d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities;
- (e) contribute to strengthening cooperation and coordination throughout the whole judicial process, particularly in the area of organised crime;
- (f) contribute to the fight against corruption, fraud and financial crime;.

## V. THE LAW

- 35. Before considering the complaint on its merits, the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure. The Panel notes that no observations were made by the parties with regard to the admissibility of the complaint.
- 36. According to Rule 25, paragraph 1, of the Rules of Procedure, the Panel can examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.
- 37. According to the said Rule, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot review judicial proceedings before the courts of Kosovo. Subject to narrow exceptions, it is not the function of the Panel to deal with alleged violations of rights attributed to the Kosovo judiciary.
- 38. The Panel has previously found that the actions of a EULEX Prosecutor taken while examining a case are part of the executive mandate of the EULEX Kosovo and therefore fall within the ambit of the Panel's mandate as long as no indictment has been filed with a court competent to examine the merits of a case (See *B.Y against EULEX*, 2014-06, para 12, *I against EULEX*, 2013-01, 27 November 2013, par. 12; *E against EULEX*, 2012-17, 30 August 2013, at pars. 20-22; *Z against EULEX*, 2012-06, 10 April 2013 at par. 32; *W against EULEX*, 2011-07, 5 October 2012 at par. 21; *Hoxha against EULEX*, 2011-18, 23 November 2011 at par. 22; *S.M. against EULEX*, 2011-11, 23 November 2011 at par.15, *Sadik Thaqi v. EULEX*, 2010-02, para 64).
- 39. The Panel, after considering the facts of this case, is satisfied that the conduct complained of relates directly to the actions of EULEX Prosecutors in the discharge of their executive functions between January 2009 and December 2014 during which time EULEX

prosecutors were responsible for the criminal investigation against the complainant.

40. In such circumstances, the Panel unanimously decides that the complaint falls within the ambit of its mandate and satisfies the admissibility criteria as set out.

## **VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION**

### **Complaint**

41. As noted above, the complainant alleges a violation of his rights under Article 6 of the ECHR.
42. The relevant paragraphs of that provision read as follows:

#### **Article 6 Right to a Fair Trial**

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

### **Submissions by the parties**

#### **The duration of the proceedings**

43. The complainant submits that the criminal investigation against him commenced on 11 October 2006 and was not terminated until 15 December 2014, thus spanning a period of over eight years and two months.
44. The complainant further submits that, as a result of the ongoing investigation against him, he was unable to obtain employment during that period of time.
45. In his submissions, the HoM acknowledges that the case was handed over to EULEX by UNMIK in January 2009 and that it was concluded by way of a final ruling of the Basic Court of Peje/Pec in December 2014.
46. Furthermore, the HoM submits that the EULEX prosecution undertook investigative measures in the case in 2009 and early 2010 and says that there was a period from March 2010 until March 2013 where there were no attempts by the prosecutor to conclude the case. It is also submitted by the HoM that, on 15 March 2013, the EULEX Prosecutor formally terminated the investigation against a co-defendant of the complainant and considered the case against the complainant as closed in accordance with Article 292(2) of the CPC. A



review of the complainant's case was undertaken by the Office of the Chief EULEX Prosecutor in November 2014.

With regard to the alleged violation of the complainant's rights under Article 6 (1) of the Convention, the HoM submits that "*the right to a hearing within a reasonable time exists so that the accused does not have to face a charge for too long and that the charge is determined*". The further submits that the assessment of what is *reasonable* time depends on a number of factors including the complexity of the case, the conduct of the accused and the conduct of the authorities.

47. In this regard, the HoM submits that nothing in the present matter suggests that the conduct of the complainant has prolonged the case and that the internal EULEX enquiries did not reveal that the case post-indictment was particularly complicated. The HoM further submitted that even if it had been so, it cannot excuse the authorities from at least attempting to bring the case forward.
48. Furthermore, the HoM concedes that the investigation was not concluded within the timeframe EULEX ideally would have wanted.

#### **Keeping the Complainant Informed**

49. The complainant argues that he was not informed by EULEX of the status of the investigation and prosecution against him.
50. The complainant submits that on 29 June 2011, he requested from the EULEX Prosecutor "*assistance to solve my case*" because he was unable to gain employment without a document showing that he was not anymore under investigation. The complainant submits that he never received any response to this letter from EULEX.
51. In response, the HoM submits that prior to EULEX taking over the case, there was no obligation on the part of EULEX to inform the complainant of the status of the case against him. The HoM further submits that EULEX Prosecutors did not inform the complainant of the withdrawal of the indictment which occurred on 11 February, 2009 because they intended to continue with the criminal proceedings against him and also that, under the KCCP, the Prosecutor had no obligation to inform the complainant. He further states that Article 326 of the KCCP obliges the Court to notify the parties to the proceedings if the indictment was withdrawn after the case has reached the main trial stage and notes that the KCCP did not foresee a situation where the indictment is withdrawn at an earlier stage.
52. The HoM also submits that the complainant was, in fact, aware that the indictment had been withdrawn because he mentioned it in his subsequent letter to the prosecution. The HoM suggests that the EULEX Prosecutor informed the complainant on 6 July 2010 that his

case was under review and still the subject of judicial proceedings. He also acknowledges that EULEX did not respond to the complainant's request for information dated 29 June 2011 but suggests that EULEX Prosecutors were not legally obliged to do so and that this did not affect complainant's rights under Article 6 of the Convention.

53. In response to the HoM's observations, the complainant submits that these observations are intended to minimize, if not completely eliminate, the responsibility of EULEX Prosecutors with regard to his case. He further alleges that he was not informed by EULEX of the fact that the indictment filed against him had been withdrawn or that EULEX Prosecutors were intent on continuing criminal proceedings against him despite his constant requests for information.

### **The Panel's Assessment**

54. The Panel has already had occasion to note 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,D against EULEX* nos. 2012-09 to 2012-12, 20 June 2013, para 50; *K to T against EULEX*, para 53; see also HRAP decision in cases nos. 248/09, 250/09 and 251/09, 25 April 2013, para 35).
55. In each case, the Panel is therefore expected to review whether there were concrete and real obstacles that might have undermined the possibility for EULEX to conduct a prompt and effective investigation of a case. Such an evaluation is not intended to justify operational shortcomings unrelated to concrete and demonstrable challenges.
56. 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 (HRAP decision in cases nos. 248/09, 250/09 and 251/09).
57. 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* (See *Stogmuller v Austria* A 9 (1969) p.40; 1 EHHR 155, 191) ...*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” (Stogmuller v Austria A 9 (1969) p.40; 1 EHHR 155, 191. Cf, Wemhoff v FRG A 7 (1968); 1 EHRR 55).*

58. 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 (see *Konig v FRG A 27 (1978); 2 EHRR 170 PC* and *Pedersen and Baadsgaard v Denmark 2004-XI; 42 EHHR 486 GC*).
59. The Panel notes 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.
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.
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 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 (See *Bunate Bunkate v Netherlands* A 248-B (1993); 19 EHHR 477. Cf, *Kudla v Poland* 2000-XI; 25 EHHR 198 GC). 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.
64. The Panel has also examined the consequences of these shortcomings for the accused (*Frydlender v France* 2000-VII; 31 EHHR 1152 GC). 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 (See, e.g., *Buchholz v FRG* A 42 (1981); 3 EHHR 597. Cf, *Eastaway v UK* hudoc (2004) (company director)).
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.

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.

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


1. **Declares** the complaints with regard to the criminal proceedings taken against the complainant by EULEX between January 2009 and 15 December 2014, admissible;
2. **Finds that there has been** a violation of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
3. **Declares** that in light of the above findings of fact and law it is appropriate to make recommendations to the HoM, and

**RECOMMENDS THE FOLLOWING ACTIONS:**

- The HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant's rights attributable to the acts and/or omissions of EULEX in the performance of its executive mandate.
- The HoM should undertake all necessary measures to conduct an examination of what steps could be taken by the Office of the Chief EULEX Prosecutor (OCEP) to ensure that cases under the authority of that Office are dealt with in accordance with the provisions of Article 6(1) of the Convention and that an effective review mechanism is put in place to ensure that all such cases are dealt with within a reasonable time. In this regard, the Panel draws attention to the fact that when the instant case was subject of a review by the OCEP, the case was brought to a speedy conclusion.

The HoM is invited to inform the Panel and the complainant of the measures which have been taken and the results which they have produced by 12 February 2016.

For the Panel,

  
John J. RYAN  
Senior Legal Officer



  
Magda MIERZEWSKA  
Presiding Member