



DECISION and FINDINGS

Date of adoption: 19 October 2016

Case No. 2014-37

Y.B.

Against

EULEX

The Human Rights Review Panel, sitting on 19 October 2016
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Ms Elka ERMENKOVA, Member

Assisted by
Mr John RYAN, Senior Legal Officer

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

Having deliberated, decides as follows:

PROCEDURE

1. The Presiding Member of the Panel, Ms Magda Mierzewska, participated in the deliberations of this case by way of electronic communications in accordance with Article 13(3) of the Panel's Rules of Procedure.
2. The complaint was registered on 29 September 2014. Mr Guénaël Mettraux recused himself and did not participate in the consideration of the case in accordance with Rule 12 par. 1(1) of the Panel's Rules of Procedure. Due to the resignation of Ms Katja Dominik, the Panel Member, she was replaced in the deliberations by Ms Elka Ermenkova, the Substitute Member, in accordance with Rule 14 par. 2 of the Rules of Procedure.

3. On 4 February 2015, the Panel decided to give notice of the complaint to the Head of Mission of EULEX Kosovo (HoM), inviting him to submit written observations on the complaint. It was also decided to examine the merits of the application at the same time as its admissibility (pursuant to Rule 30 paragraphs 1 and 2 of the Rules of Procedure of the Panel).
4. The observations of the HoM were received on 29 April 2015. They were afterwards communicated to the complainant for his additional observations.
5. On 5 June 2015, the complainant sent in his observations, which were subsequently forwarded to HoM for information.
6. In reply to the complainants' comments, the HoM submitted additional observations on 31 August 2015.
7. With a view to protecting the privacy and identity of the complainant, the Panel has decided, *proprio motu*, to delete the name of the complainant from the present decision (in accordance with article 46 of the Panel's Rules of Procedure). He will be referred to as Y.B.

FACTS

I. CIRCUMSTANCES OF THE CASE

8. On 4 July 2014 a EULEX Prosecutor with the Special Prosecution Office of the Republic of Kosovo (SPRK) filed an indictment against a certain N.K. with the Basic Court of Pristina. He was charged with organised crime, aggravated murder and various drug offences.
9. The complainant's name appeared in the indictment. In particular, it was stated that certain N.K. "in co-perpetration" with the complainant and several other persons "did organize, establish, supervise, manage and/or direct this Structured and Organized Criminal Group (OCG) or did actively participate in this OCG, knowing that his participation will contribute to the commission of the serious crime of Aggravated Murder against rival gangster boss [R.D.] (...)". It was further submitted that N.K. had "attended a number of meetings with [the complainant and other persons], in Bosnia and Hercegovina. The participants of these meetings formed an Organized and Structured Criminal Group to plan, plot and murder [sic] rival gangster boss R.D. (...)". Further, the indictment referred to the testimony of one of the witnesses, who claimed that the complainant had had reason to hate the victim as the latter had been in relationship with the complainant's wife before her marriage. The Prosecutor also requested that the

complainant, together with a number of other persons, be summoned to the main trial as a witness.

10. On 14 July 2014, during the initial hearing before the Basic Court of Pristina, the SPRK Prosecutor read out the indictment against N.K. with the content as summarized above. It was not made public in its entirety at that time, but was widely reported by the press over the Balkans. Moreover, the Prosecutor talked to the media and told Al Jazeera that the complainant co-operated with N.K. and formed an organized criminal group with him and several others.
11. On 1 September 2014, the complainant filed a confidential request with the Basic Court of Pristina to strike out his name from the indictment against N.K.. He also requested a public clarification that he was not a suspect or a defendant in the case in question and asked that the prosecutor be ordered to investigate whether the process in the case had been subverted through the provision of false or misleading evidence.
12. On 2 September 2014, the entire indictment, presumably leaked, was published on the internet on the website of the Organised Crime and Corruption Reporting Project.
13. On 9 September 2014, the SPRK prosecutor filed a confidential response with the Basic Court. He asked the court to dismiss the complainant's request as inadmissible based on lack of standing.
14. On 12 September 2014, the Basic Court of Pristina confirmed the indictment against N.K. and submitted the case for trial.
15. On 22 September 2014, the complainant filed a request for witness protection measures with the Basic Court of Pristina. He argued that he had been threatened and that his wife and son suffered psychological problems due to the publication of the indictment.
16. On 4 December 2014, the Basic Court of Pristina ordered that the presentation and publication of the counts against defendant N.K. shall "hereinafter not include the names of the persons who are alleged by the Prosecution to be un-indicted co-perpetrators in the indictment", including both written and oral forms. The court stated, *inter alia*, that "the perception of the indictment by the public must have been very detrimental for [the complainant] as the indictment formulated by the Prosecutor can easily be understood in a way that he is at least accused in the case". The court rejected the request for protective measures as ill-founded and all other complainant's requests as inadmissible.
17. The main hearing in the case against N.K. took place on 16 January 2015. The SPRK Prosecutor made his opening statement and referred to the complainant a number of times and alluded to his alleged role in the conspiracy to murder R.D. He alleged, *inter alia*,

that “the evidence in this case will show that the defendant [N.K.] directed, organized and financed with [the complainant] the murder of R.D.” The Prosecutor also presented several charts depicting the alleged organized crime group for murder of R.D. with a picture of the complainant.

18. The proceedings in the case against N.D. are pending.
19. The complainant and two other persons were arrested in Sarajevo, Bosnia and Hercegovina, on 25 January 2016 on charges of obstruction of justice (attempts to exert pressure on a witness in the N.K. case).

II. RELEVANT APPLICABLE LAW

Joint Action

20. 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), in their relevant parts, read as follows:

Article 2 Mission Statement

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

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

Article 3 Tasks

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

(a) monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities;

...

(d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities;

(e) contribute to strengthening cooperation and coordination throughout the whole judicial process, particularly in the area of organised crime;

(f) contribute to the fight against corruption, fraud and financial crime;

Criminal Procedure Code

Article 221 Petition for Protective Measure or Anonymity

1. At any stage of the proceedings, the state prosecutor, defendant, defence counsel, injured party, cooperative witness or witness may file a written petition with the competent judge for a protective measure or an order for anonymity if there is a serious risk to an injured party, cooperative witness, witness or his or her family member.

2. The petition shall contain a declaration of factual allegations. The competent judge shall file the petition and declaration in a sealed envelope and only the competent judge over the stage of the proceedings and the state prosecutor may have access to the sealed contents.

3. After receipt of the petition, the competent judge may order appropriate protective measures for an injured party, cooperative witness or a witness, or if he or she deems it necessary prior to making a decision on the petition, convene a closed hearing to hear further information from the state prosecutor, the defendant, the defence counsel, the injured parties, cooperative witness or the witnesses. In the case of a petition requesting an order made pursuant to Articles 223 and 224 of the present Code, the competent judge shall convene a hearing in closed session.

4. The competent judge may make an order for a protective measure for an injured party, cooperative witness or witness where he or she determines that:

4.1. there exists a serious risk to the injured party, cooperative witness, witness or his or her family member; and

4.2. the protective measure is necessary to prevent serious risk to the injured party, cooperative witness, witness or his or her family member.

5. The state prosecutor shall be immediately notified by the competent judge of any petition made by the defendant, defence counsel, injured party, cooperative witness or witness and is entitled to make recommendations and statements regarding the facts to the competent judge at a hearing and in writing if there is no hearing ordered by the competent judge.

THE LAW

Mandate of the Panel (Rule 25 § 1 of the Rules of Procedure)

21. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the International Covenant on Civil and Political Rights, which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.

22. Before considering the complaint on its merits, the Panel must decide whether to accept the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
23. The HoM maintained that filing of an indictment and an opening statement given by a prosecutor are a part and “the most typical element imaginable” of judicial proceedings before a Kosovo court. According to him, the complaint, therefore, falls outside of the Panel’s jurisdiction and should be rejected as inadmissible, in accordance with its Rules of Procedure and the OPLAN.
24. The complainant argued that the Panel had previously held that “the actions of EULEX Prosecutors taken while examining the case (...) fall within the ambit of the Panel’s mandate” and if “committed during the investigative stage of criminal proceedings are not to be considered a part of ‘judicial proceedings’”.
25. The Panel reiterates that according to Rule 25, paragraph 1, of its Rules, the Panel can only examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate.
26. The Panel reiterates that the actions or omissions attributable to the prosecutors during the investigative phase of criminal proceedings may not be considered as being made in the context of “judicial proceedings”. Actions of an 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 until at least the time when an indictment has been filed with a court competent to examine the merits of a case (see, *Thaqi against EULEX*, no. 2010-02, 14 September 2011, §§ 63-64).
27. Furthermore, the Panel has found that it cannot be excluded that it might be competent to evaluate the actions of EULEX prosecutors in criminal investigations even if they are subject to judicial review. The Panel would be competent to examine such acts and decisions, for instance, where the subject matter of acts and decisions subject to such review touches on human rights issues. The Panel would only intervene if and where allegations of human rights violations attributed to the prosecutor have not been fully addressed by the competent judicial authorities (see *E against EULEX*, 2012-17, 30 August 2013, § 22; *Z against EULEX*, 2012-06, 10 April 2013, § 34).
28. In the present case, the Basic Court of Pristina ordered, on 4 December 2014, that the presentation and publication of the counts against N.K. should not include the names of the persons who were alleged to be un-indicted co-perpetrators in the indictment. However, the order was given only after the indictment had been filed and became known to the public and after the Prosecutor had named the complainant a “co-perpetrator” to the crimes and a member of an organized criminal group in his contacts with the media.

29. The Panel cannot but note that, whatever action the Basic Court undertook, it was already too late to reverse the Prosecutor's actions and their consequences. The alleged damage to the complainant's rights would have already been done with the filing of the indictment. It cannot therefore be concluded that the interference with the complainant's rights took place in the context of "judicial proceedings", nor were they fully addressed by the Basic Court (see, also, *E against EULEX* decision, cited above, § 24). In view of the above, the Panel finds itself competent to examine the complaint.

Alleged violations of Articles 2 and 3 of the Convention

Complaints

30. The complainant argued that, by publicising his name in the indictment, both as an alleged co-perpetrator and a witness, the Prosecution exposed him and his family to danger to life and physical security. There was therefore a breach of Articles 2 and 3 of the Convention, which read as follows.

Article 2 Right to life

31. 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 Prohibition of torture

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

32. The complaint submitted that despite being aware that the case might generate witness protection concerns, the EULEX Prosecutor had undertaken no risk assessment and taken no steps to ensure safety of the prospective witness. He alleged that public dissemination of the indictment had significant repercussions on his and his family's well-being and safety. He had been threatened and his wife and son suffered psychiatric problems due to the publication of the indictment.

The Panel's assessment

33. The Panel reiterates that the first sentence of Article 2 enjoins the authorities not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, among other authorities, *L.C.B. v. the United Kingdom*, 9 June 1998, par. 36, Reports of Judgments and Decisions 1998-III).
34. The Panel observes that the evidence presented to it is insufficient to conclude that the life of the complainant or that of his relatives was put at risk as a result of conduct attributable to EULEX. The Panel

concludes therefore that the part of the complaint pertaining to an alleged violation of Article 2 of the Convention by EULEX is manifestly ill-founded and therefore inadmissible (compare, e.g., *W against EULEX*, no. 2011-07, decision on admissibility of 5 October 2012).

35. As regards the complaint under Article 3, the Panel notes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of this provision (see, among many other authorities, European Court of Human Rights (ECHR), *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 162; *Iwańczuk v. Poland*, no. 25196/94, § 50, 15 November 2001).
36. The Panel acknowledges that the complainant and his family might have suffered fear and anguish upon learning about the contents and the public dissemination of the indictment. However, the Panel is not persuaded that their mental suffering attained the minimum level of severity to fall within the scope of Article 3 of the Convention. The complaints are therefore manifestly ill-founded and, consequently, inadmissible.

Alleged violation of Article 8 of the Convention

Complaints

37. The complainant submits that the actions of the EULEX Prosecutor constitute a violation of his right to private life which encompasses a person's reputation. EULEX is therefore said to have breached Article 8 of the Convention, which reads as follows

Article 8 Right to respect for private and family life

1. Everyone has the right to respect for his private (...) life ...
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Submissions of the parties

38. In his submissions, the HoM acknowledged that the complainant, together with other individuals, had been named in the indictment as being suspected of participating in an organised criminal group. However, nowhere had it been said that he was a defendant or that he had been charged with any criminal offence; he had merely been given a witness status in the case. When referring to the complainant in the indictment, the Prosecutor had found it indispensable to make reference to individuals other than N.K., in order to give the court an opportunity to know all the facts and the roles of those individuals in the crimes he was charged with. Given the complainant's relationship

with N.K, it would be impossible for the prosecutor to present evidence without referring to the complainant's name in the indictment and during the trial. At the opening of the trial, when reading the counts against the defendant, the Prosecutor had not mentioned the complainant's name. He had done so during his opening statement, but it had not been forbidden by the court.

39. Regarding the alleged violation of Article 8 of the Convention, the HoM submitted that the Prosecutor had made references to the complainant's personal information in order to mount an effective prosecution of N.K., accused of murder. Therefore, his actions served a legitimate aim of prevention of disorder or crime and the protection of the rights of others within the meaning of Article 8 of the Convention. The HoM further argued that the references to the complainant and his personal information were necessary and indispensable for the sake of effectively prosecuting N.K. The effects of mentioning the complainant's name were also mitigated by the subsequent ruling of the Basic Court, which had made it clear that he was not an accused or a defendant in N.K.'s trial. Moreover, as often stated in the case-law of the European Court of Human Rights, the complainant as a public figure had to tolerate a higher level of interference with his private life than an "ordinary person".
40. The complainant maintained that the indictment had been littered with personal attacks against him of a sufficient gravity to compromise his personal integrity. It was asserted, among other defamatory and unsupported allegations, that the complainant's wife had been in a relationship with the victim or that there was evidence that the complainant had collaborated with the "enemy" during the war. Placing allegations such as those in an indictment created the impression that they carried weight. Such allegations might be fatal in the ethnically charged environment of a post-conflict country.
41. He further argued that neither the references to him as a co-perpetrator, nor to his wife's alleged personal relationship, served a legitimate aim of carrying out an effective investigation, within the meaning of Article 8 of the Convention. Simply because the evidence was relevant, it did not mean it had to be pleaded in the indictment. Even if it was presented in court, there was no necessity for the Prosecutor to mention full names of un-indicted co-perpetrators. Nothing would have prevented the Prosecutor from using pseudonyms, which was a widespread practice in serious criminal proceedings. Moreover, an alleged motive for the crime was not a relevant material fact that should have been pled in the indictment.
42. The complainant submitted that none of the interferences with the complainant's private life committed by the Prosecutor served the legitimate aim in a proportionate manner. Even if one accepted legitimacy of the aim to undertake a criminal investigation with subsequent prosecution for murder, this did not mean that the interference with the complainant's rights was necessary in the

particular circumstances of the case. The interference was far greater than any apparent benefit and, therefore, not proportionate to the aim sought.

43. The complainant maintained that the right to preserve one's reputation called for protection far stronger than argued by the Head of Mission, as apparent from the case-law of the European Court of Human Rights. Moreover, the damage to one's reputation varied depending on the individual and their position. In the present case, the complainant's name was mentioned in the indictment at the very moment when he announced his participation in the presidential elections, thereby causing a far greater damage to his reputation.

The Panel's assessment

44. The Panel reiterates that, according to the case-law of the European Court of Human Rights, a person's reputation constitutes part of the right to respect for private life, and is therefore protected by Article 8 of the Convention (ECHR, *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI, *Pfeifer v. Austria*, no. 12556/03, § 35).
45. However, in order for Article 8 to come into play, the attack on a person's honour and reputation must attain a certain level of gravity (see, *inter alia*, *A. v. Norway*, no. 28070/06, § 64, 9 April 2009; *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII). The Panel observes that there has been a number of cases concerning statements made in a course of an investigation or judicial proceedings where the Court found that there was an interference with the applicant's right to a private life (see, for instance, *Sanchez Cardenas v. Norway*, no. 12148/03, § 33, 4 October 2007; *Mikolajová v. Slovakia*, no. 4479/03, § 57, 18 January 2011).
46. In the present case, it was implied in the indictment that the complainant participated in an organised crime group in order to murder a "rival crime boss" which constitutes a serious criminal offence (see par. 9 above). A statement couched in such terms made in an official indictment seems to amount to an affirmation that the complainant did commit the crimes concerned, although he is not indicted in the criminal proceedings in question (even if he was arrested in Bosnia and Herzegovina in relation to a different criminal offence). Elsewhere, it has been implied that the complainant's wife had been "in a relationship" with the victim before she had married the complainant (see par. 9 above). Revealing intimate aspects of the complainant's and his wife's private life, whether true or false, also amount to an interference with the complainant's right to respect to his private life.

47. As to the question whether the interference was “in accordance with the law”, the Panel observes that it has not been questioned either by the parties or by the Basic Court of Pristina in its ruling of 4 December 2014. The Panel sees no reason to accept otherwise.
48. The Panel’s task is to determine whether the interference served a legitimate aim and whether it struck a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (see *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I). Turning to the next criterion in Article 8 § 2, the Panel is prepared to accept that the interference pursued one of the legitimate aims enumerated in Article 8 § 2, notably the prevention of disorder or crime.
49. The question remains, therefore, whether a fair balance has been struck between the competing public and private interests in this case. In his submissions, the HoM argued that naming the complainant in the indictment was indispensable to present the Basic Court with all the facts and to mount an effective prosecution of N.K. The Panel is not persuaded by those arguments. The Panel acknowledges that it might have been impossible to indict N.K. of organised crime and argue the case against him without referring to other persons involved. Nonetheless, from the wording of the indictment it appears that, without it serving any purpose in the case against N.K., the Prosecutor made an assertion of fact that the complainant had committed a serious crime. Nowhere in the indictment is it made clear that the complainant is not, in fact, a suspect and that no criminal proceedings are pending against him. To the contrary, he is called in no uncertain terms a “co-perpetrator” and a “gang boss” (see paragraph 9 above). These statements, in the Panel’s view, go much further than describing a mere state of suspicion.
50. The Basic Court of Pristina also pointed it out in its order of 4 December 2014, when it stated that “the indictment formulated by the Prosecutor can easily be understood in a way that he is at least accused in the case” (see par. 15 above). Furthermore, the Panel observes that there seems to be no reason why the complainant and other alleged “co-perpetrators” should be mentioned by name at this stage of the proceedings and why it did not suffice to refer to them in more general terms (for instance “other persons”) or using their initials.
51. Likewise, the Panel sees no cogent reasons why invoking the complainant’s wife’s personal life as an alleged reason for his “hate” towards the victim would have any material relevance to the case against N.K.
52. On the whole, no arguments have been adduced to show that the case of prosecution against N.K. could not be mounted effectively with the description of the facts presenting the complainant’s alleged

involvement in the offences in which N.K., was believed to be involved in a more nuanced manner.

53. The Panel observes that the above portrayal of the complainant in an authoritative prosecutorial act, in a manner which indicated rather certainty than possibility or suspicion on the prosecution's part, was capable of stigmatizing him and of having a major impact on his personal life and reputation.
54. In the light of the above, the Panel finds that the interference with the complainant's right to respect for his private life was not sufficiently justified in the circumstances and, as such, was disproportionate to the legitimate aims pursued. Accordingly, it gave rise to a violation of Article 8 of the Convention.

Alleged violations of Article paragraphs 1 to 3 of Article 6 of the Convention

Complaints

1. The complainant submitted that, by alleging publically that the complainant was a part of a criminal organisation, the EULEX Prosecutor violated Article 6 § 2 of the Convention. The complainant adds that, in breach of Article 6 § 3 of the Convention, he was never officially informed of the nature and cause of allegations against him, despite being effectively charged with murder. Moreover, it was alleged that the complainant was responsible for murder, yet he was denied his right to access to justice, to defend himself and exercise his rights under Article 6 § 1 of the Convention. These provisions, in their relevant parts, read as follows

Article 6 Right to a fair hearing

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.

....

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

....

Submissions of the parties

2. The HoM submitted that, in view of the principle of independence of EULEX judges and prosecutors, it would not be appropriate for him to

comment on the applicability and possible breach of Article 6 § 2 of the Convention. He merely acknowledged that, in its ruling of 4 December 2014, the Basic Court of Pristina seemed to have found this provision applicable.

3. The complainant argued the European Court of Human Rights has held that the concept of the “charge” should be “substantive”, rather than “formal” and that “charge” was defined as “an official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”. Although he had not been formally charged, the complainant’s inclusion in the indictment as a co-perpetrator in the murder of N.D. clearly fell within this definition of the charge. He considers that the public reading of the indictment gave an impression that his guilt had been subjected to some sort of judicial confirmation. However as an un-indicted conspirator he had no possibility of challenging this indictment.

The Panel’s assessment

The Panel already found a violation of Article 8 of the Convention, which was based on the same facts, forming ground for the alleged breach of Article 6. Therefore the Panel finds it unnecessary to explore whether there was a violation of the latter. It therefore declares this complaint inadmissible.

Alleged violations of Articles 10 and 11 of the Convention

Complaints

55. The complainant submits that EULEX violated his right to participate freely and fairly in democratic elections by destroying his dignity and reputation and, consequently, his political career. The complainant invokes Articles 10 and 11 of the Convention, which, in their relevant parts, read as follows.

Article 10 Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

....

Article 11 Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

56. The complainant argued that under Article 10 he had a right to freedom of expression, which extends to political expression and the right to express freely his ideas for the future of his country as its president. Similarly, Article 11 of the Convention guaranteed his freedom of assembly and association, including a right to form political parties. Violation of this right must extend to any executive actions

which attempt to silence an individual's political ideas, such as including the complainant's name in the indictment.

The Panel's assessment

57. The Panel has already acknowledged that including his name in the indictment as an alleged co-perpetrator of murder might have damaged his reputation and, consequently, his political standing. Nevertheless, the Panel sees no indication that it had any bearing on his rights under Article 10 and 11 of the Convention. It therefore finds these complaints inadmissible, as being manifestly ill-founded.

FOR THESE REASONS,

THE PANEL, UNANIMOUSLY

1. *Declares* the complaints under Articles 6, 10 and 11 of the Convention inadmissible as being manifestly ill-founded;
2. *Finds* a violation of Article 8 of the Convention;

and

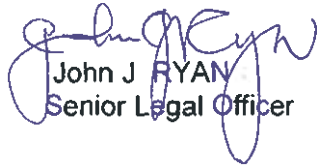
DECLARES

that in the light of its above findings of fact and law the Panel finds it appropriate to make recommendations to the HoM, and

RECOMMENDS THE FOLLOWING REMEDIAL ACTION

- a. 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 attributable to EULEX in the performance of its executive mandate;
- b. The HoM should provide copy of the present Decision to the EULEX Prosecutors through the relevant channels. This should serve to inform the EULEX Prosecutors of the general nature of an obligation to make it their priority to protect rights and freedoms of not only suspects and the accused but other persons involved in cases they investigate.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda WERZEWSKA
Presiding Member