



DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 5 February 2014

Cases no. 2012-09, 2012-10, 2012-11 and 2012-12

A, B, C and D

Against

EULEX

The Human Rights Review Panel, sitting on 5 February 2014, 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
Ms Joanna MARSZALIK, Legal Officer
Mr Florian RAZESBERGER, 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. DECISION OF THE PANEL OF 20 June 2013

1. On 20 June 2013, the Panel rendered its decision in relation to complaints filed by A, B, C and D in regard to a number of incidents which had taken place in the context the events of Vidovdan in June 2012. The Panel found that some of the violations alleged by the complainants had indeed occurred and were attributable to EULEX, resulting in the breach of the complainants'

rights under Articles 8, 9, 11 and 13 of ECHR, as well as Articles 17, 18, 21, 22 and 2 of the ICCPR in respect of all four complainants.

2. In its Decision, the Panel made a number of recommendations to the HoM in accordance with Rule 34 of the Rules of Procedure to the following effect:

- i. "That HoM acknowledges that the fundamental rights of the complainants have been breached by EULEX.
- ii. That HoM requests all relevant branches and organs of EULEX, which possess information regarding last year's Vidovdan events, to provide him with a full and complete overview of EULEX's actions during these events. On that basis, that the HoM ensures that any information in the possession of EULEX regarding possible human rights violations committed in this context (including any violation attributable to Kosovo Police (KP) officers) is provided to the competent Kosovo authorities for follow-up action and investigation. Should EULEX later determine that such cases were not fully and adequately investigated, that EULEX consider taking over the responsibility of investigating these cases.
- iii. The HoM is invited to enquire with competent investigative and prosecutorial authorities in EULEX:
 - a) whether further investigative steps could be taken in relation to the incident involving complainants B, C and D; and
 - b) whether the case related to complainant A is being investigated by competent Kosovo authorities and, if not, whether it should be investigated by EULEX.

The Panel invites the HoM to inform the complainants, directly or through the competent investigative organs of EULEX, of the result of these enquiries. The complainants are at liberty to report to the Panel in relation to any outstanding matter when they are contacted by EULEX.

- iv. With regard to the planning of the involvement of EULEX in the forthcoming celebrations on 28 June 2013, that the HoM ensures that, the competent authorities of EULEX
 - a) conduct a risk assessment with a view to the establishment and identification of possible sources of risks to the effective protection of the human rights of participants in the said Vidovdan celebrations. For that purpose, that competent EULEX authorities refer to and learn lessons from the shortcomings identified in the Vidovdan operation in June 2012 and as are recorded in the present decision;
 - b) submit to HoM a detailed plan with regard to the involvement of EULEX in the forthcoming Vidovdan celebrations on 28 June, 2013. Such a plan to include a detailed description of the means and resources required to ensure that EULEX officers perform their executive mandate responsibilities effectively, in particular with regard to the protection and preservation of the human rights of the participants in these events. This will include, if necessary, the option for EULEX officers to request for reinforcements. This plan to also include adequate means of communication and transportation to

ensure that prompt intervention is possible where necessary in order to pre-empt or put an end to human rights violations;

- c) ensure adequate coordination between the EULEX Mission on the one hand and KP and competent Kosovo authorities on the other so that there is effective protection of the participants in these celebrations. That EULEX also ensure that KP officials involved in such matters are made fully aware that the perpetration of violence upon participants will not be tolerated and that mechanisms of accountability will be in place to punish wrongdoers;
 - d) assign a sufficient number of EULEX officers to this task, commensurate with the importance of those Vidovdan events and in accordance with the potential risk of human rights violations;
 - e) provide clear guidelines and instructions to all EULEX police officers involved in this operation, in particular with regard to the circumstances under which they would be obliged to intervene to protect the human rights of participants.
- v. Regarding potential investigation and reporting of misconduct, that the HoM also ensures that EULEX officers involved in the Vidovdan operation carefully record any instance of human rights violations which they may witness or which are reported to them. That EULEX, in turn, investigate each of these alleged incidents and/or transmit this information to the competent Kosovo investigative authorities with a view to ensure effective investigation of any such cases.”

3. The present decision constitutes a follow-up to the Panel’s decision of 20 June 2013 and recommendations made therein. The power and authority of the Panel to follow-up on its decisions and recommendations is provided for in Rule 45 bis of the Panel’s Rules of Procedure (see e.g. the decisions on the implementation of recommendations 2011-07, [W. against EULEX](#), 25 November 2013; 2010-01, [Djeljaji Kazaqic v. EULEX](#), 23 November 2011 and 2010-07, [Blerim Rudi v. EULEX](#), 23 November 2011)

II. INFORMATION RECEIVED FROM EULEX’S HEAD OF MISSION REGARDING THE IMPLEMENTATION OF THE PANEL’S RECOMMENDATIONS

4. On 21 August 2013, the Head of Mission (HoM) informed the Panel about a number of measures which he had taken with regard to the recommendations of the Panel.
5. In particular, the HoM informed the Panel that he had requested the most thorough overview of EULEX actions during the events as well as of EULEX operations in connection with the *Vidovdan* celebrations from both the Executive and the Strengthening Department. The HoM had asked the Heads of both Departments and the Chief EULEX Prosecutor to conduct additional inquiries in order to verify whether they were in possession of additional information regarding possible

human rights violations related to the 2012 *Vidovdan* celebrations, with a view to provide competent Kosovo authorities with such information if it existed.

6. The HoM also requested the Chief EULEX Prosecutor to conduct a further assessment of the cases involving complainants B, C and D in line with the Panel's recommendations. In addition, the HoM enquired with the Head of the Strengthening Division whether the incident involving complainant A had been investigated or was currently being investigated by Kosovo authorities.
7. The HoM also referred to a number of the planning and operational measures adopted in relation to the 2013 *Vidovdan* celebrations. These measures included a risk assessment conducted to identify the potential for human rights violations to re-occur in the context of that year's *Vidovdan* celebrations. Taking into consideration this assessment, EULEX prepared a detailed operational plan to ensure the effective protection of the human rights of those involved in the 2013 celebrations.
8. Instructions were issued to EULEX police officers working within the Divisions on how they were expected to react when witnessing human rights violations by Kosovo police and/or by private parties. The plan also included the option for deployed staff to call for reinforcements when necessary to safeguard the rights of participants.
9. With regard to coordination with local counterparts, the HoM indicated that a meeting had taken place with the Deputy Prime Minister of Kosovo on 26 June 2013 and that EULEX had been in contact with Serb religious leaders.
10. Measures undertaken in relation to *Vidovdan* also included involvement of EULEX police officers with the KP in the policing of the events and regular consultations were held with the Kosovo Police. The Mission provided a comprehensive list of recommendations that were accepted and implemented by the KP. EULEX also prepared a human rights analysis of the domestic legislation on the seizure of flags, emblems and T-shirts which contained recommendations that were subsequently accepted and implemented by the KP.
11. EULEX further indicated that it had provided a "Human Rights Audit Tool" which was designed to measure compliance with the operational plans that incorporated relevant standards of international human rights law.
12. Further, written guidance was provided within EULEX on how to react if a potential violation of human rights was witnessed by EULEX police officers. EULEX police officers were instructed to record such incidents. EULEX staff were also requested to instruct subordinates on modalities concerning the sharing of relevant information with the competent Kosovo authorities. EULEX provided a summary on the

monitoring of the *Vidovdan* celebrations of 2013 which concluded that no human rights violations had been reported.

13. On 13 December 2013, the HoM informed the Panel of further actions taken in pursuance of the Panel's decision and recommendations. The HoM noted that he had been informed by the Chief EULEX Prosecutor that a review of the preliminary investigation had been concluded. This review disclosed that the complaints submitted to the Panel contained more information than that submitted in the criminal reports to the prosecution. In the course of the preliminary investigation these additional allegations came to the attention of the mixed team of prosecutors through detailed statements made by KP officers, injured parties and witnesses. This new evidence was taken into account when the authorities decided to discontinue the investigation as no one had a case to answer. In light of this, the Chief Prosecutor submitted that, at this stage, no further investigative steps were justified. However, it was not excluded that the investigation could be re-opened should new evidence come to light.
14. Furthermore, EULEX submitted reports about the allegations raised by complainant A to the Police Inspectorate of Kosovo and to the Basic Prosecution Office in Pristina. The Chief State Prosecutor of Kosovo replied that the complaints could not be dealt with by his office due to the absence of sufficient information to initiate a criminal investigation.

III. INFORMATION FROM THE COMPLAINANTS

15. The complainants did not comment on the actions taken by the HoM.

IV. EVALUATION BY THE PANEL

16. The Panel takes note of the steps taken by the HoM to implement the majority of the Panel's recommendations. Whilst noting that the HoM did not expressly acknowledge the violation of human rights of the complainants and did not inform the complainants of steps taken by him, the Panel commends the HoM for taking a number of significant steps to address the violations recorded by the Panel and to put in place important safeguards in pursuance of the Panel's recommendations.
17. The Panel also notes the following as further indications of the HoM's commitment to addressing problems identified by the Panel in its Decision:

The involvement of EULEX in the Vidovdan celebrations 2013

18. The Panel notes with satisfaction that the HoM implemented all recommendations in relation to the planning of the involvement of EULEX in the Vidovdan celebrations of 28 June 2013.

19. The Panel notes in particular that EULEX conducted a risk assessment with a view to establishing and identifying possible sources of risks to the effective protection of the human rights of participants prior to the *Vidovdan* celebrations of 28 June 2013. In that context, the Panel notes that the shortcomings in planning that affected the 2012 celebrations were fully addressed.
20. A detailed operational plan regarding the involvement of EULEX in the *Vidovdan* celebrations of 2013 was drafted. Adequate means of communication to ensure prompt intervention were put in place.
21. It also appears from information provided to the Panel that adequate coordination between the Mission and competent Kosovo authorities was established to ensure the effective protection of the participants in these events. Also, KP officials were properly briefed about their responsibilities and EULEX recommendations were implemented by Kosovo authorities.
22. While the HoM did not provide numbers, it is apparent from the information available to the Panel that a much higher number of EULEX police were deployed for the *Vidovdan* celebrations of 2013.
23. The Panel is satisfied that EULEX provided clear guidelines and instructions to all EULEX police officers involved in the 2013 *Vidovdan* operation, in particular with regard to the circumstances under which they would be required to intervene in order to protect the human rights of participants.
24. Finally, the HoM also instructed that EULEX police officers involved in the operation should carefully record any instance of human rights violations they may witness or which were reported to them.

Investigations

25. The Panel notes that the HoM took a number of steps to ensure that instances of human rights violations were being investigated.
26. In relation to complainants B, C and D, the Panel commends the actions undertaken by the Chief Prosecutor of EULEX to review those cases. In relation to complainant A, the Panel notes that the Chief State Prosecutor of Kosovo has taken the view that the complaints should not be dealt with by his office because there was insufficient evidence / information justifying the initiation of a criminal case. In this regard, the Panel notes that EULEX has not indicated whether the case could or should be investigated by EULEX.
27. The Panel has not been informed whether the HoM notified the complainants, directly or through the competent investigative organs of EULEX, of the result of these enquiries, as recommended by the Panel. The Panel invites the HoM to consider doing so if this has not yet been undertaken.

28. Having examined the information provided with regard to the implementation of the recommendations of the Panel,

THE PANEL UNANIMOUSLY

Declares that the HoM has exercised his functions diligently and effectively in the implementation of the Panel's recommendations.

Decides to close the examination of this case.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member