



DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 27 May 2014

Cases no. 2012-19 and 2012-20

H and G

Against

EULEX

The Human Rights Review Panel, sitting on 27 May 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 30 September 2013

1. On 30 September 2013, the Panel rendered its decision in relation to the complaints filed by H and G 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 were established and were attributable to EULEX. These resulted in the violation of the complainants' rights under Articles 8, 9 and 11 of the European

Convention on Human Rights (ECHR), as well as Articles 17, 18, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

2. In its Decision, the Panel made a number of recommendations to the Head of Mission (HoM) in accordance with Rule 34 of the Rules of Procedure to the following effect:
- i. That HoM acknowledges that the complainants' rights 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 EULEX's possession 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 whether investigative steps could be taken in relation to the incident involving complainants H and G.

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. Should EULEX play any part in the 2014 *Vidovdan* celebrations, 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 call 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) in line with the resources reasonably available for such purposes, 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 30 September 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 *A,B,C&D against EULEX*, 2012-09, 2012-10, 2012-11 & 2012-12, 5 February 2014; *W. against EULEX*, 2011-07, 25 November 2013; *Dielljaj Kazagic v. EULEX*, 2010-01, 23 November 2011 and *Blerim Rudi v. EULEX*, 2010-07, 23 November 2011).

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

4. On 26 November 2013, the 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 a thorough review of EULEX actions during the events as well as of EULEX operations in connection with the Vidovdan celebrations of 28 June 2012. In this context, the HoM made reference to his submissions of 20 August 2013 in relation to the cases of *A,B,C&D against EULEX* (compare par 5 and 7 to 12), which pertain to the same general events. The HoM specified that his submissions not only related to cases A, B, C & D, but also to cases H & G. It was specifically pointed out that the HoM had instructed all EULEX officers to carefully record any potential human rights violations they might witness. EULEX officials had been requested to instruct their subordinates as to when such information should be shared with the local authorities. As a result of the actions taken already as follow up to these cases, in particular for the Vidovdan celebrations of 2013, it

was believed that EULEX acted in compliance with the Panel's recommendations.

6. The HoM also informed the Panel that having regard to the ongoing strategic review of the Mission, he could not commit to any operative measures relating to the *Vidovdan* celebrations of 2014 at this stage. However, it was confirmed that should EULEX play any part in the *Vidovdan* celebrations of 2014, the Panel's recommendations would be given due consideration.
7. In relation to complainants H&G, EULEX could not find any specific information that could have been consequently handed over to Kosovo authorities for further investigative action. Therefore, the HoM asked for the Panel's assistance in obtaining further information regarding the identity of the complainants. Following those efforts, on 26 May 2014, the HoM informed the Panel that on 12 March 2014, EULEX submitted reports to the Basic Prosecution Office in Pristina and to the Police Inspectorate of Kosovo (PIK). The report to the Basic Prosecution Office in Pristina was also sent in copy from the Chief State Prosecutor of Kosovo. The Chief State Prosecutor responded to EULEX that his office had requested the Chief Prosecutor at the Basic Court in Pristina to take measures prescribed by law.
8. After a request from PIK, EULEX staff met with PIK investigators on 1 April 2014. PIK informed EULEX that they had taken a number of investigative measures in this case, including the interviewing of several complainants in relation to the events on *Vidovdan* 2012.

III. INFORMATION FROM THE COMPLAINANTS

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

IV. EVALUATION BY THE PANEL

10. The Panel takes note of the steps taken by the HoM to implement the majority of the Panel's recommendations.

Acknowledgement of human rights violations

11. As in previous decisions, the Panel notes that the HoM did not formally acknowledge the violation of the complainants' human rights despite the Panel's recommendation to that effect.
12. The Panel notes once again that the acknowledgment of human rights violations by states is a well-established practise in the procedures of, *inter alia*, the European Court of Human Rights (see therefor Rule 62 A of the Rules of the Court). A similar practice of acknowledgment of human rights violations is regularly applied by the Human Rights Advisory Panel (HRAP) of UNMIK (see for instance, in the HRAPs

latest decision to date, *MITIĆ against UNMIK*, case no. 064/09 of 14 March 2014 at p. 43).

13. Given the fact that the Panel cannot recommend to the HoM that monetary compensation be paid to the victim, it invites the HoM to make use of the remedies available to him. In some cases, the formal acknowledgement of a violation of rights is capable of providing some redress to the victim of a violation. Considering the limitations placed upon the ability of the Panel to recommend financial compensation as stipulated by the in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel, the formal acknowledgment of a violation by the competent authority becomes all the more important as a form of redress.

Operative measures taken in regard to Vidovdan celebrations

14. The Panel reiterates its findings in relation to the operative measures undertaken by EULEX in relation to the *Vidovdan* celebrations of 2013 (see the decisions on the implementation of recommendations *A,B,C&D against EULEX*, 2012-09, 2012-10, 2012-11 & 2012-12, 5 February 2014 at pars. 18-24) and considers them to constitute an adequate implementation of the Panel's recommendations.
15. In the light of the upcoming *Vidovdan* celebrations on 28 June 2014, the Panel further recommends to the HoM to review the recommendations of its previous decisions in relation to *Vidovdan* celebrations (see *A,B,C&D against EULEX* 2012-09, 2012-10, 2012-11 & 2012-12, of 20 June 2013 as well as *H&G against EULEX*, 2012-19 & 2012-20). This should assist the HoM in determining EULEX's concrete human rights obligations related to the *Vidovdan* celebrations of 2014. Such an assessment appears to be of paramount importance in light of EULEX's new mandate. In doing so, EULEX would demonstrate its commitment to ensuring that the risk of human rights violations of individuals is taken seriously and that steps are taken to prevent their occurrence.

Investigations

16. The Panel notes that the HoM took a number of steps to ensure that instances of human rights violations found by the Panel in its decision of 30 September 2013 were being investigated, and that the local authorities including the Basic Prosecution Office in Pristina as well as the PIK have been informed accordingly. In these circumstances, the Panel considers these steps to constitute an adequate and sufficient implementation of the Panel's recommendation.
17. 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 a majority of the Panel's recommendations. The Panel further invites the Head of Mission to reconsider his position as regards the possibility of acknowledging violations of the complainants' rights where the Panel makes recommendations to that effect.

Decides to close the examination of this case.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member