



DECISION ON THE IMPLEMENTATION OF THE RECOMMENDATIONS

Date of adoption: 23 November 2011

Case No. 2010-01

Mr. Djeljalj Kazagic

Against

EULEX

The Human Rights Review Panel, sitting on 23 November 2011, with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, Member
Ms. Anna BEDNAREK, Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Leena LEIKAS, Legal Officer
Ms. Stephanie SELG, 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 of 9 June 2010,

Having deliberated, decides as follows:

I. DECISION OF THE PANEL ON 8 APRIL 2011

1. On 8 April 2011 the Panel took the following decision on the complaint made by Mr. Djeljalj Kazagic on 2 September 2010:

The Panel, by majority,

Declares the complaints with regard to civil proceedings in Mitrovicë/Mitrovica Municipal Court, and to criminal proceedings before the EULEX prosecutor, **admissible**,

Finds that there has been a violation of Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and a violation of Article 1 of Protocol No. 1 to that Convention,

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

RECOMMENDS THE FOLLOWING REMEDIAL ACTIONS:

The HoM should undertake all necessary measures for the removal of the state of uncertainty affecting the complainant's peaceful enjoyment of his possessions, by, in particular,

- undertaking an examination as to whether the conditions for the complainant's civil case being taken over by EULEX judges, specified in Article 5 paragraph 1 (c) (ii) or (iii) of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in Kosovo have been fulfilled;

- establishing reasons for which there seems to have been no progress in the investigation opened before the EULEX prosecutor as a result of the complainant's request of 25 June 2009;

- furthermore, examining whether in the circumstances of the complainant's case the conditions necessary for the EULEX prosecutor's subsidiary competence to arise have been met; and

- undertaking examination of what steps could be taken with the assistance or involvement of EULEX in order to ensure the definitive implementation of the judicial decision of 11 December 2007.

HoM is invited to inform the Panel and the complainant of the measures which have been taken, and about the results they have produced, by 31 October 2011.

II. INFORMATION FROM THE HOM EULEX

2. On 7 June 2011 the HOM informed the Panel that the findings are being studied and the recommendations analyzed.

3. By a letter dated 26 October 2011 the HOM informed the Panel as follows:

- EULEX located the files of the case in question at the Mitrovicë/Mitrovica Municipal Court and assigned a Judge to conduct an analysis to determine whether the conditions for the complainant's case being taken over by EULEX judges have been fulfilled. After an impartial review of the materials available, it was determined by the assigned judge that the conditions have not been fulfilled.

- EULEX did not open a prosecutorial investigation in the case in question, as it had already been investigated by the local

prosecutor prior to the complainant filing a complaint with EULEX.

- Even though EULEX has the legal authority to take over the prosecution of the case in question, the EULEX Chief Prosecutor, after having conducted a careful review of the case file, decided not to take over the case.
 - Despite the careful and detailed consideration by the EULEX Judges, Prosecutor and EULEX Justice Component senior management, it was concluded that prioritizing the current case would not advance the objectives of EULEX, nor would it improve the overall situation in the Kosovo court system. Therefore the examination of this case was not prioritized at the expense of other cases pending before the courts.
4. In addition, the HOM stated that he understands and sympathizes with the Complainant's situation, and that he is well aware of the large judicial backlog within the court system in Kosovo.

III. INFORMATION FROM MR. DJELJALJ

5. On 3 November 2011, Mr. Kazagic informed the Panel that no progress had been made in his case in Mitrovicë/Mitrovica. The property is still registered as collateral for a loan taken out by a person who is not the owner of the property. The complainant has not been able to correct the registry entry before the Cadastral Agency.
6. However, with regard to the case that has been pending before the Economic Crime Investigation Unit in Prishtinë/Priština since 30 June 2008, some progress has been reported. The complainant's brother, the co-owner of the property in question, has been invited to appear at the Prishtinë/Priština Police Station No. 2 on 6 December 2011 to give evidence for the examination of the case.

IV. EVALUATION BY THE PANEL

7. The Panel takes note of the information received from the parties.
8. The Panel is aware of the serious backlog of cases pending before the Mitrovicë/Mitrovica Municipal Court and the constant problems faced by that court in the context of the general political situation in the region.
9. However regrettable it is that the complainant's case has not proceeded since the time he lodged the complaint with the Panel, the Panel notes that EULEX has undertaken certain measures to address the complainant's situation within the framework of its executive mandate.

10. Having examined the information provided by the parties with regard to the implementation of the recommendations made by the Panel,

THE PANEL UNANIMOUSLY

Declares that HOM has exercised his functions as appropriate in this case and,

Decides to close the examination of this case.

For the Panel,

John J. RYAN
Senior Legal Officer

Antonio Balsamo
Presiding Member