



Human Rights Review Panel

Newsletter # 13 – June to December 2015

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Recent sessions of the Human Rights Review Panel

The Human Rights Review Panel (Panel) held its 26th regular session from 15 to 17 June 2015. The Panel found three cases inadmissible. It also struck off a case from its list of complaints.

The Panel held its next session from 28 to 30 September 2015. During this session, it examined eight cases related to investigations carried out by EULEX Kosovo into killings and disappearances which occurred in 1999 and 2000. The Panel found the complaints to be admissible in all cases and requested the parties to provide additional observations on the merits of the complaints.

The 28th session of the Panel took place from 11 to 13 November 2015. In three cases the Panel declared that EULEX had violated the rights of the complainants. One case was declared inadmissible. The Panel rendered two follow-up decisions in cases where it had previously found violations of the rights of the complainants.

The next Panel session is scheduled to take place in February 2016.

Human rights violations in [*Desanka and Zoran Stanisić against EULEX*](#) case

The complaints in the case (no. 2012-22) related to a number of investigations into criminal offences against the complainants. In all cases EULEX Prosecutors in charge of investigations dismissed crimi-

nal reports lodged by the complainants. The Panel found that EULEX Prosecutors had failed to keep the complainants sufficiently involved in the investigative process. Neither were they properly informed about the actions of the EULEX Prosecutors and the conduct of the investigation. Moreover, the complainants were not given any reasons for the decisions of the Prosecutors to terminate the cases. The Panel stressed that the involvement of victims in the investigative process and the need for a reasoned explanation of its termination are intended to create a degree of public scrutiny and a sense among victims that they have been treated fairly and that their search for justice has been diligently pursued. In conclusion, the Panel declared that EULEX violated the right of the complainant to an effective remedy (Article 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms – “the Convention”) and submitted a number of recommendations on remedial measures to the Head of Mission EULEX Kosovo.

Violations in *Fitim Maksutaj against EULEX* case

In this case (no. 2014-18), the Panel found that unjustified delays in the criminal investigation against the complainant resulted in a violation of his right to a fair and public hearing within a reasonable time under Article 6 of the Convention. In the Panel’s view, the proceedings were not conducted with necessary diligence and expediency. In addressing the issue of the reasonableness of the length of the proceedings the Panel examined the particular circumstances of the case and considered a number of specific factors relevant to that evaluation, namely, the complexity of the case, the conduct of the applicant and the conduct of the competent administration. The Panel concluded that shortcomings in the EULEX investigation had a negative impact on the overall length of the investigation. In addition, the Panel found that neither the conduct of the complainant or the complexity of the case contributed to this delay. The Panel also examined the consequences of these shortcomings for the complainant and concluded that the obligation of the EULEX Prosecutor to apply particular diligence to the resolution of cases based on the prejudicial impact for the complainant, including employment opportunities, was not satisfied in this case. The Panel made a number of recommendations on remedial measures to the Head of Mission.

Violations in *L.O. against EULEX* case

This case (no. 2014-32) was lodged by a relative of a person who has been missing since 1999. His disappearance was investigated initially by the Special Prosecutor, Republic of Kosovo (SPRK), EULEX Kosovo Prosecutors and it was then taken over by the Special Investigative Task Force, (SITF). The complainant submitted that EULEX had failed to conduct an effective investigation into her relative’s disappearance. The Panel considered the complaint in relation to two separate phases: prior to and after the SITF informed the EULEX Kosovo that it would investigate the case. In relation to the first period, the Panel found that the investigative efforts of EULEX were insufficient, in particular, in view of the gravity of the case, and that it had failed to provide adequate and timely information to the complainant regarding this investigation. As regards the second period, the Panel criticised the lack of transparency and clarity of the legal basis under which the SITF operates and its status within EULEX Kosovo. It noted that such a state of affairs made any review of the activities of SITF almost impossible. The Panel also noted that the involvement of the SITF had not demonstrably contributed to securing effective protection for the rights of the complainant. Without clearer and more detailed information about the actions of the SITF and its contribution to the investigation of the case, the Panel concluded that it had to draw an inference that the rights of the complainant had been and continued to be violated. Consequently, the Panel declared that EULEX infringed the rights of the complainant under Article 2 (obligation to investigate cases of suspicious deaths), Article 3 (with regard to suffering the unknown fate of her relative), Article 8 (right to respect for private and family

life) and Article 13 (right to an effective remedy) of the Convention. The Panel also made recommendations on remedial measures to the Head of Mission EULEX Kosovo.

Follow-up decisions in *X and 115 others against EULEX* case

The case was brought by 116 Roma Internally Displaced Persons (IDPs) who were displaced during the 1999 conflict and re-located in a number of IDP camps in north Mitrovica. The complainants alleged that a number of their human rights were violated during or as a consequence of their stay in those camps. In its [decision of 22 April 2015](#) on the merits of the case, the Panel found that EULEX Kosovo violated the rights of the complainants to an effective remedy guaranteed under Article 13 of the Convention. The Panel considered that EULEX's failure to initiate a timely and effective investigation into alleged violations of the complainants' rights compromised their ability to obtain an effective remedy for the harm which they had suffered. It recommended to the Head of Mission that EULEX Kosovo should enquire with the Kosovo authorities as to whether an investigation into the alleged violations of the rights of the complainants was ongoing. Further, that Panel recommended that the Head of Mission instruct EULEX Prosecutors to consider whether to take over the case.

In its [follow-up decision](#) the Panel found that the EULEX Head of Mission had implemented its recommendations in part only. The Panel acknowledged that the HoM implemented its recommendation to enquire with the local authorities whether the investigation in the case was ongoing, but it had not been shown that there has been real progress in the investigation. Furthermore, it noted that the Chief State Prosecutor of Kosovo and the Chief EULEX Prosecutor decided not to assign the case to a EULEX Prosecutor. The Panel considered that the steps taken by the Mission were insufficient and that the right of the complainants to an effective remedy continued to be adversely affected in the absence of an effective investigation. The Panel declared that it would continue its examination of this case.

Follow-up decisions in *Becić against EULEX* case

In its decision on the merits of the case [Becić against EULEX](#) (adopted on 11 November 2014), the Panel found that EULEX Kosovo violated the complainant's right to an effective remedy guaranteed under Article 13 of the Convention and made recommendations for remedial measures to the Head of Mission. It invited him to ensure that the registration and initial assessment of complaints to EULEX, in so far as they relate to the Mission's executive mandate, are assessed by staff with legal and human rights expertise and consequently communicated to relevant units.

In the [follow-up decision](#) of 11 November 2015, the Panel concluded that the Head of Mission had implemented its recommendations and closed its examination of the complaint.

Admissibility decisions

The Panel examined eight cases relating to the fate of persons who had been murdered or gone missing since 1999 and 2000 (cases [D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R against EULEX](#), nos 2014-11 to 2014-17 and case [Rejhane Sadiku-Sula against EULEX](#), no. 2014-34). The complaints were lodged by family members of the missing, who submit that EULEX failed to carry out investigations into the alleged deaths and disappearances of their relatives. The Panel found that it had temporal jurisdiction to examine the cases and requested the Head of Mission to submit further observations on the merits of the case. In particular, the Panel requested the Head of Mission whether, in

his view, EULEX violated the rights of the complainant under Article 2 (right to life – procedural obligations), Article 3 (prohibition of torture, inhuman and degrading treatment), Article 8 (right to a private and family life) and Article 13 (right to an effective remedy) of the Convention.

Inadmissibility and strike-out decisions

During its June session, the Panel declared three cases to be inadmissible. One case was filed outside the six-month time limit provided for in the Rules of Procedure of the Panel ([Slavica Mikić against EULEX](#), no. 2014-38). In another case, the Panel considered that the complaint was unsubstantiated ([Bujar Zherka against EULEX](#), no. 2014-42). The third case related to the death a EULEX staff member, allegedly arising from negligence attributed by the complainant to the EULEX Medical Unit ([Liridona Mustafa – Sadiku against EULEX](#), no. 2014-41). The Panel considered that it did not have jurisdiction to examine alleged violation of rights of EULEX personnel. Moreover, it declared that actions or omissions of EULEX medical professionals do not fall within the ambit of the executive mandate of EULEX and, therefore, the complaint fell outside the jurisdiction of the Panel.

The Panel struck one other case off the list of complaints ([Avni Hajdari against EULEX](#), no. 2014-40). As the complainant failed to provide documents requested by the Panel and could not be contacted, the Panel concluded that he did not intend to pursue his complaint.

One further case ([Milica Radunović against EULEX](#), no. 2014-02) was found inadmissible during the Panel's November session. The Panel found the complaint premature, as the proceedings complained of were still pending.

Meeting with the Chief of Staff EULEX

Mr John Rouse, the new EULEX Chief of Staff, met with the Panel during its November session. The Panel briefed Mr Rouse on its mandate and procedures and answered his questions about its operations and workload. The Panel and the Chief of Staff also discussed the co-operation between EULEX and the Panel and the future of the Mission.



Panel meeting with Chief of Staff EULEX

Left to right: Guenael Mettraux, Ola Quarnstrom, John Rouse, Paul Landers, Elka Filcheva-Ermenkova, Katja Dominik, Joanna Marszalik, Magdalena Mierzewska, John J Ryan

Public outreach campaign

The Panel and the Secretariat continued their outreach campaign and met with representatives of various bodies, including the newly elected Ombudsperson of Kosovo, Mr Hilmi Jashari, Ms Zlata Radovanovic , Coordinator of Office for Kosovo and Metohija as well as local authorities and civil society.

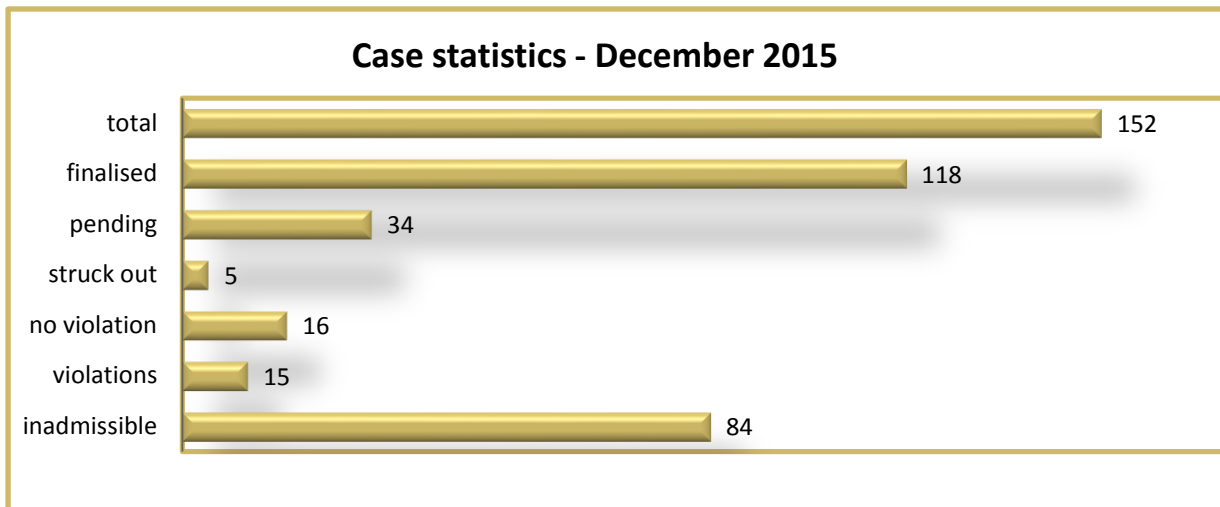


Meeting with the Ombudsperson of Kosovo

Left to right: John J Ryan, Joanna Marszalik and Hilmi Jashari

The Panel and the Secretariat additionally continued with its public outreach campaign in Serbia. The Panel met with representatives of the Serbian government including representatives of the Office for Kosovo and Metohija as well as the Commission for Missing Persons in Belgrade. The government representatives were briefed on current work and case-law of the Panel, in particular cases concerning murdered and missing persons. The Panel also met with Mr Rastko Brajkovic from the Danish Refugee Council, during which the Panel discussed recent case-law and obtained updates on the issues which are the subject matter of complaints before the Panel.

Case statistics



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HOW TO FILE A COMPLAINT WITH HRRP

(Rules 25 and 26 of the Rules of Procedure of the HRRP)

Who?

Any person who does not work for EULEX Kosovo and who claims to be a victim of a human rights violation by EULEX Kosovo in the performance of its executive mandate.

The complainant (the person making the complaint) can be represented by a lawyer or another representative of his or her choice. In that case a letter of authority must be filled in.

What?

The Panel will only examine complaints concerning alleged human rights violations that happened after 9 December 2008 in Kosovo. The violation must be caused by EULEX Kosovo in the performance of its executive mandate.

The Panel will not review judicial proceedings before the courts in Kosovo.

When?

The complaint must be submitted to the Panel within six months from the date of the alleged violation.

How?

The complaint must be submitted in writing. No complaints may be made by phone. The complainant can use either the English, Albanian or Serbian language.

The complaint should normally be made on the complaint form and be accompanied by relevant documents and decisions (if any), as instructed in the form.

If a complaint is introduced in a letter, such letter must set out, at least in summary form, the subject matter of the complaint in order for the matter to be examined further.

Where?

The complaint may be filed at:

Human Rights Review Panel - Secretariat

Rrustem Statovci Street no. 29 – 10000 Pristina – Kosovo

Tel: +381 (0) 78 78 2125

A complaint can also be sent by email to office@hrrp.eu

www.hrrp.eu

Completion of the Complaint Form

The complaint should be written legibly and, preferably, typed.

The form should contain all contact details of the complainant.

If the complainant provides documentary evidence, legible copies should be submitted. **Do not send original documents.**

The documents should be listed in date-order, numbered consecutively and with a short description (e.g. letter, order, judgment, appeal, etc.).

The complaint will be assigned a file number upon registration. The file number must be referenced in all subsequent correspondence. If the complainant has an earlier complaint pending before the Panel, he or she must inform the Panel of the file number. If the complainant for some reason does not wish his or her identity to be disclosed, he or she should fill in the appropriate section of the complaint form.