



**DECISION ON A REQUEST FOR THE ADOPTION OF
INTERIM MEASURES**

Date of adoption: 24 August 2022

Case no. 2021-02

O.L. and Others

Against

EULEX

The text of the decision adopted by the Chairperson of the Panel on 24 August 2022 was redacted by the Head of Mission, using his powers under the Operation Plan (OPLAN) for the European Union Rule of Law Mission in Kosovo. The Head of Mission considered that the original text of the decision could affect the operational effectiveness of the Mission.



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The Chairperson of the Human Rights Review Panel, sitting on 24 August 2022, in her authority under Rule 22 Interim Measures of the Panel's Rules of Procedure,

Ms Snježana BOKULIĆ, Chairperson

Assisted by

Mr Ronald HOOGHIEMSTRA, Legal Officer

Having considered the aforementioned request for the adoption of interim measures with respect to the 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 11 December 2019,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. This complaint is brought by the complainant on behalf of himself, his wife and his five (5) minor children.
2. The complaint in this case was first brought to the attention of the Human Rights Review Panel ("the Panel") by electronic communication of 31 May 2021. Following receipt of the formal application form, the complaint was registered on 26 October 2021.
3. By letter of 9 November 2021, the Panel informed the European Rule of Law Mission in Kosovo, EULEX Kosovo ("the Mission") that this case had been registered with the Panel.
4. Subsequent to the registration of the complaint, the complainant has continued to submit additional information.

5. On 23 April 2022, the complainant submitted a request for the adoption of interim measures in his case.

II. IDENTITY OF COMPLAINANT

6. The complainant in this case requested not to have his identity disclosed to the public.
7. Having considered the matter, in particular the nature of the complainant's status and the allegations being made, the Chairperson is satisfied that this request should be granted.

III. COMPOSITION OF THE PANEL

8. The Chairperson has determined that it is appropriate to consider this request for the adoption of interim measures in her single capacity as Chairperson of the Panel, in accordance with Rule 22 of the Rules of Procedure.

IV. FACTS

9. The facts of the case as submitted by the complainant may be summarised as follows.
10. The complainant is a citizen of a country of the former Yugoslavia. Since a young age, he had been involved in criminal activities in various countries of the former Yugoslavia. At some point, the complainant became aware of a credible threat to his life and began to actively seek some form of protection.
11. In August 2013, the complainant and his wife signed an agreement with the EULEX Witness Protection Programme. Based on this agreement, the complainant provided testimony in a criminal trial being conducted by EULEX prosecutors and judges. The complainant was not permitted to retain a copy of this agreement.
12. As a protected witness, the complainant, together with his wife and young child, were transferred to various locations [REDACTED]
[REDACTED]
13. Between August 2013 and April 2021, the complainant and his family have been relocated on more than [REDACTED] occasions, for periods of time varying between a few days to several years. During this time, the complainant and his family were located in at least 10 (ten) different countries on two (2) different continents. On separate occasions during this time, a second and a third child were born to the complainant and his wife.
14. As a result of the numerous relocations, the complainant's first child missed approximately eighteen (18) months of schooling, while his second child missed some seven and half (7.5) months of school education.
15. In at least two (2) of the countries where the complainant was relocated, the complainant and his family had local residency papers [REDACTED]
[REDACTED] In the other countries, the complainant and his family did not have local residency papers.

16. On a large number of occasions since August 2013, the complainant has received numerous visits, at his protected addresses, from a substantial variety of EULEX and other officials seeking to question him about matters relating to organized crime in the former Yugoslavia, as well as to discuss his status.
17. On 30 April 2021, the complainant signed a new agreement with the EULEX Witness Protection Programme terminating his status as a protected witness in this programme. The complainant was not permitted to retain a copy of this agreement.
18. The complainant currently resides with his family in a member state of the European Union. He currently has a local residence status under his own name.
19. Recently, the complainant's wife gave birth to twins. Allegedly, as a result of his indeterminate legal status, the complainant is not able to register the birth of these two children with any country. As a consequence, these children have no legal identity.

V. COMPLAINT

20. The complainant alleges that the EULEX Witness Protection Programme has ruined his life and that of his family. He submits that, as a result of the constant moving from country to country over a period of eight (8) years, and the lack of a sustained legal status, neither he nor his wife have been able to establish themselves in a profession or to obtain gainful employment. Furthermore, as a result of the constant changes in residency arrangements, school systems and languages, the complainant submits that his children are suffering from severe psychological trauma, including developing a tendency to self-harm.
21. The complainant alleges that, when he first enrolled in the EULEX Witness Protection Programme, he was told that he would only need to be protected for one (1) or two (2) years at most, and after that he would be able to enjoy a normal family life. He submits that, if he had known at the outset what would in fact happen to him and his family, he would never have accepted to participate in the programme. In addition, the complainant alleges that he has now been left in a location where he and his family may be at risk, due to the close proximity of many immigrants from the former Yugoslavia.
22. The complainant alleges that the manner in which EULEX Witness Protection has dealt with him and his family has exposed them to serious risk to their lives. In particular, the overly frequent visits by EULEX and other officials have exposed him to discovery in the communities where he was placed. Furthermore, the neighbourhood where he was finally placed was not properly vetted and he is at constant risk of being discovered by criminal elements of the former Yugoslavia. The complainant alleges that EULEX has failed in its positive obligations to protect his life and that of his family, in violation of Article 2 of the European Convention on Human Rights.
23. The complainant alleges that the manner in which he and his family have been treated by EULEX amounts to inhuman and degrading treatment, in violation of Article 3 of the European Convention on Human Rights. In addition, the complainant alleges that EULEX has violated his rights and the rights of his family to the enjoyment of their private and family life as protected by Article 8 of the European Convention on Human Rights.
24. The complainant alleges that he has been trying to regularize his status, but that the local authorities and his national consulate both claim that he is a protected witness of EULEX, and that, therefore, they cannot help him. The complainant has been unable to obtain clarity from EULEX as to whether or not he is still considered by EULEX to be a protected

witness. Furthermore, the complainant is disturbed that both the local authorities and his national authorities appear to have access to information about him of which he is not aware.

VI. REQUEST FOR THE ADOPTION OF INTERIM MEASURES

25. The complainant submits that his life and that of his family may be in danger because of the close proximity of immigrants from the former Yugoslavia in their current location and the attendant risk of his being recognized. [REDACTED]

26. The complainant requests that interim measures be adopted by EULEX such that he and his family shall be moved from their current location to a safer location within the same Member State of the European Union, or otherwise, that EULEX shall facilitate the enrolment of the complainant and his family into the witness protection programme of his national authorities.

VII. THE CHAIRPERSON'S ASSESSMENT ON THE REQUEST FOR INTERIM MEASURES

27. The Chairperson recalls *Rule 22 Interim Measures* of its Rules of Procedure, which provides that,

"1. The Panel, or where appropriate, its Chairperson, may, at the request of a complainant, or at its own discretion, propose to the Head of Mission that an interim measure it considers necessary be adopted in the interests of the proper conduct of the proceedings before it. The Head of Mission will take a decision.

2. The Panel may request information from the complainant or other persons on any matter connected with the implementation of any interim measure decided by the Head of Mission."

Preliminary considerations

28. Before considering the request for the adoption of interim measures, the Chairperson must consider whether the complaint falls *prima facie* within the Panel's jurisdiction, as provided by the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel, and as further elaborated in its Rules of Procedure.
29. The Chairperson must consider the Panel's competence over this complaint *ratione materiae*, *ratione personae* and *ratione temporis* in that order.
30. According to Rule 25, paragraph 1, the Panel can only examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate. The mandate of EULEX is determined by Council Joint Action 2008/124/CFSP of 4 February 2008, as amended by Council Decision 2018/856 of 8 June 2018, and as further defined in the Operation Plan 2021 of EULEX. In those documents, the Witness Protection Programme is defined as belonging to the executive functions of EULEX.
31. To the extent that the complaint alleges violations of rights committed by the EULEX Witness Protection Programme, the complaint must be considered to fall within the

jurisdiction of the Panel *ratione materiae*. At the same time, given that the complainants, as protected witnesses, allegedly came within the jurisdiction of the EULEX Witness Protection Programme, and that the Witness Protection Programme is an operational component of the Mission, the complaint must be understood as being directed at the Mission, and therefore to come within the competence of the Panel *ratione personae*.

32. The Chairperson notes, that, according to the complainant, he has been a client of the EULEX Witness Protection Programme from August 2013 until at least 30 April 2021. The Chairperson notes further that the complaint was introduced in substance on 31 May 2021 and formally registered on 26 October 2021, which time-frame falls within the period of EULEX's mandate. Arguably, taking the apparent termination of the Witness Protection Programme as the significant event, the complaint may be understood as being introduced within the six-month deadline of the event complained of required under Rule 25 of the Rules of Procedure. Furthermore, the complainant alleges that he has information suggesting that his participation in the EULEX Witness Protection Programme has, in fact, never been terminated.
33. In these circumstances, the Chairperson concludes that this complaint falls *prima facie* within its jurisdiction *ratione materiae*, *ratione personae* and *ratione temporis*.
34. The Chairperson will therefore proceed to examine the complainant's request for the adoption of interim measures.

Regarding the request for interim measures

35. The Chairperson recalls the case-law of the European Court of Human Rights ("the Court") with respect to the granting of interim measures under Rule 39 of its Rules of Court. Rule 39 provides, *inter alia*, that

"1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings. [...]"

36. In practice, the Court has granted interim measures in cases involving an imminent risk of irreparable harm to the applicant or to the ability of the Court to examine the merits of the complaint. In its Judgment of 6 February 2003 (*Mamatkulov and Abdurasulovic v. Turkey*, Nos. 46827/99 and 46951/99), at paragraph 55, the Court reiterated that,

"Rule 39 of the Rules of Court empowers a Chamber or, where appropriate, its President, to indicate interim measures which it considers should be adopted. Past practice shows that in principle requests for interim measures under Rule 39 are made in cases in which there is an imminent danger to the applicant's life or of torture, or inhuman or degrading treatment or punishment."

37. The Court noted, furthermore, at paragraph 107 that, *"[...] Indications given by the Court, as in the present case, under Rule 39 of the Rules of Court, permit it to carry out an effective examination of the application and to ensure that the protection afforded by the Convention is effective [...]"*.
38. Rule 22 of the Panel's Rules of Procedure limits the scope of interim measures to those adopted in the interests of the proper conduct of the proceedings alone. In the view of the Chairperson, a variety of elements are essential for the conduct of its proceedings, foremost among them the preservation of life of the complainants in order for them to be

able to take part in the proceedings until they are concluded. In this regard, protecting the right to life of the complainants is paramount.

39. Given that witness protection programmes are set up and made available to witnesses who need protection, their main objective should be *“to safeguard the life and personal security of witnesses/collaborators of justice, and people close to them, aiming in particular at providing the appropriate physical, psychological, social and financial protection and support.”* (Recommendation Rec(2005)9 of the Committee of Ministers of the Council of Europe states, at para 22.)
40. In the present case, the Chairperson notes that the complainant has submitted, on five different occasions between 31 May 2021 and 23 April 2022, that there is a risk to his life due to the chance of being recognized in the neighbourhood of his current residence as a result of his past status as a criminal and protected witness.
41. The Chairperson is not in a position to evaluate the extent of the risk to his life or that of his family members. The Chairperson, however, notes that the very purpose of a witness protection programme is to safeguard the life of witnesses and their family members. Indeed, if no risk to their lives existed there would be no need to place them in a witness protection programme in the first place, unsettling the lives of the complainants and at a significant cost to the public purse.
42. The Chairperson recalls that, with regard to witness protection, in its Judgment in *R.R. and Others v. Hungary* (4 December 2012, No. 19400/11) the Court explicitly stated that,

“[...] in applying the rules of witness protection to the applicants’ case, the authorities implicitly accepted that there was a serious risk to their life, limb or personal liberty. [...] Given the well-known nature of mafia conflicts and the applicants’ unrefuted allegations about them being wanted by criminal circles – an assertion not implausible in the light of the first applicant’s having become a collaborator of justice enabling the unravelling of internationally organised criminal activities – the Court accepts that there was indeed a serious threat to the applicants’ lives (rather than only to limb or liberty), when the measure was originally put in place.” (See para. 30.)
43. Moreover, on a number of occasions, the Court has reiterated that Article 2, para. 1, of the Convention creates an obligation on states also to take appropriate steps to safeguard the lives of those within their jurisdiction which *“may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”* (*R.R. and Others v. Hungary*, op.cit. para 28; *Mastromatteo v. Italy*, Judgment of 24 October 2002, No. 37703/97, para 67) This positive obligation arises where *“the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and [...] they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”* (*Osman v the United Kingdom*, Judgment of 28 October 1998, No. 23452/94, para. 116).
44. In these circumstances, the Chairperson finds that the risk to the life of the complainant and/or his family members is real. Given that any risk to life may result in irreparable harm to the complainants, the Chairperson is compelled to issue these interim measures.
45. As such, the Chairperson concludes that the interests of the proceedings before the Panel do require the adoption of interim measures. The complainant’s request for the adoption of interim measures must, therefore, be granted.

FOR THESE REASONS, THE CHAIRPERSON

PROPOSES to the Head of Mission that the following interim measures be taken, without prejudging the admissibility and merits of the complaint with regard to the alleged violations of Article 2, Article 3 and Article 8 of the European Convention of Human Rights;

1. The EULEX Witness Protection Programme should take any action necessary, commensurate with the risk to the life of the complainant or his family, and within its mandate, to ensure the safety of the complainant and his family. This action may include but is not limited to:
 - a. Taking immediate action to safeguard the lives of the complainant and his family members, with particular consideration for the well-being of the children;
 - b. Clarifying the status of the complainant under EULEX's Witness Protection Programme with the current host country of the complainant as well as with the complainant's country of nationality.

REQUESTS the Head of Mission to report to the Panel on the actions that have been taken and their outcomes by 30 September 2022.

Snježana BOKULIĆ
Chairperson