



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

Date of adoption: 10 August 2023

Case no. 2021-02

O.L. and Others

Against

EULEX

The text of the decision adopted by the Panel on 10 August 2023 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 Human Rights Review Panel ("the Panel"), sitting on 10 August 2023 with the following members present:

Ms Snježana BOKULIĆ, Presiding Member
Mr Petko PETKOV, Member
Ms Marina MANCINI, Member

Assisted by
Mr Ronald HOOGHMSTRA, 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 06 July 2023,

Having deliberated through electronic means in accordance with Rule 13(3) of the Panel's Rules of Procedure, 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.
6. On 24 August 2022, the Acting Chairperson of the Panel, pursuant to her authority under Rule 22 of the Rules of Procedure, adopted a Decision on a Request for the Adoption of Interim Measures. The Head of Mission (HoM) was requested to report to the Panel on the actions that have been taken and their outcomes by 30 September 2022.
7. On 04 October 2022, the HoM submitted his response to the Request for the Adoption of Interim Measures.
8. On 02 December 2022, the Panel requested the HoM to provide the Panel with documentary evidence as referred to in his response to the Request for the Adoption of Interim Measures.
9. On 22 June 2023, the HoM made several documents available to a member of the Panel for review.

II. IDENTITY OF COMPLAINANT

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

III. FACTS

12. The facts of the case as submitted by the complainant may be summarised as follows.
13. 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.
14. 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.
15. As a protected witness, the complainant, together with his wife and young child, were transferred to various locations. [REDACTED]
16. 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.

17. 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.
18. In at least two (2) of the countries where the complainant was relocated, the complainant and his family had local residency papers. [REDACTED] In the other countries, the complainant and his family did not have local residency papers.
19. 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.
20. On 30 March 2021, the complainant signed a Declaration of Voluntary Withdrawal from the EULEX Witness Protection Programme. At some point in June or July of 2021, an addendum to this Declaration was adopted containing some amendments to the terms of the Voluntary Withdrawal. This addendum was apparently not signed by the complainant. In any case, the complainant was not permitted to retain a copy of these documents.
21. 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.
22. 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.

IV. COMPLAINT

23. 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.
24. 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.
25. 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.

26. 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.
27. 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.

V. REQUEST FOR THE ADOPTION OF INTERIM MEASURES

28. 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]
29. 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.

VI. THE CHAIRPERSON'S DECISION ON A REQUEST FOR THE ADOPTION OF INTERIM MEASURES

30. The Chairperson proposed to the HoM 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.

VII. THE HEAD OF MISSION'S RESPONSE TO THE REQUEST FOR THE ADOPTION OF INTERIM MEASURES

31. In his response, the HoM stated that the complainant and his family had voluntarily withdrawn from the EULEX Witness Protection Programme in 2021. The HoM referred to a Memorandum of Understanding (MoU) containing the terms of the voluntary withdrawal which had been signed by the complainant.
32. Furthermore, the HoM stated that „*all responsible and necessary authorities from the host country were informed of the change in status [of complainant] following the signing of the MoU in 2021.*” In addition, the HoM stated that the authorities of the complainant's country of nationality had also been advised of the complainant's status.
33. The HoM concluded that the Mission is not in a position to render any further assistance to the complainant and his family.
34. In order to fully consider the HoM's response to the Request for the Adoption of Interim Measures, the Chairperson of the Panel requested to receive a copy of the MoU referred to in the HoM's response.
35. The HoM indicated that the requested document was confidential and could not be submitted to the Panel, but could be made available to a member of the Panel for review. A series of confidential documents were made available.
36. A member of the Panel reviewed the series of confidential documents relating to the voluntary withdrawal of the complainant and his family from the EULEX Witness Protection Programme. The documents were found to corroborate the Mission's statements regarding the voluntary withdrawal of the complainant from the Witness Protection Programme and the terms of that withdrawal.

VIII. THE PANEL'S ASSESSMENT OF THE IMPLEMENTATION OF THE CHAIRPERSON'S REQUEST FOR THE ADOPTION OF INTERIM MEASURES

37. At the time when the Chairperson made the Request for the Adoption of Interim Measures, the status of the complainant with respect to the EULEX Witness Protection Programme was not clear.
38. It appears from the documents made available by EULEX, that the complainant and his family voluntarily withdrew from the EULEX Witness Protection Programme in 2021, prior to the registration of this complaint with the Panel.
39. The HoM also submits that the authorities of the Host State and the complainant's country of nationality were informed about the complainant's status.
40. The Panel considers that, following the voluntary withdrawal of the complainant from the EULEX Witness Protection Programme, the Mission can no longer be held responsible for the protection of the complainant and his family.
41. Given that the Chairperson requested the Mission to take any action necessary "*within its mandate*" to ensure the safety of the complainant and his family, the Panel finds that it was no longer within the Mission's mandate to safeguard the lives of the complainant and his family at the time when the Chairperson adopted the Request for the Adoption of Interim Measures.

42. The Panel is satisfied that the Mission has responded adequately within its mandate to the Request for the Adoption of Interim Measures.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

DECLARES that the Head of Mission has responded adequately to the Chairperson's Request for the Adoption of Interim Measures, within the context of the Mission's mandate.

DECIDES to close the examination of the Request for the Adoption of Interim Measures, 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.

Snježana BOKULIĆ,
Presiding Member

Petko PETKOV,
Member

Marina MANCINI,
Member