



DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATION

Date of adoption: 6 July 2022

Case no. 2018-01

Y.B. 2

Against

EULEX

The Human Rights Review Panel, sitting on 6 July 2022 with the following members present:

Ms Snježana BOKULIĆ, Acting-Presiding Member
Mr Alexander FASSIHI, Member

Assisted by:
Mr Ronald HOOGHIEMSTRA, 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 11 December 2019,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint in this case was registered on 20 February 2018.
2. By letter of 6 November 2018, the Panel informed the complainant's representative that the Head of Mission ("HoM") of the European Union Rule of Law Mission in Kosovo, EULEX Kosovo ("the Mission") had been notified that this case had been registered.
3. On 22 March 2019, the Panel communicated the complaint to the HoM, inviting the Mission to submit written observations on the issues raised in the complaint no later than 3 May 2019.
4. By email of 19 April 2019, the Mission requested an extension of the deadline to submit its observations on the admissibility and merits of the complaint. By email of 25 April 2019, the Panel extended the deadline to 3 June 2019.

5. By email of 30 May 2019, the Mission informed the Panel that it required specific additional information before it could finalize its observations.
6. By letter of 13 June 2019, the complainant was requested to provide the additional information as requested by the HoM. The complainant was invited to provide these documents by 14 July 2019.
7. On 14 July 2019, the complainant requested a short extension of the deadline. The Panel extended the deadline to 15 August 2019.
8. On 30 July 2019, the complainant submitted the requested additional documents.
9. By letter of 5 August 2019, the Panel submitted the additional documents to the HoM, and invited the Mission to provide its comments on the admissibility and merits of the issues raised in the complaint by 16 September 2019.
10. By email of 3 March 2020, the Mission indicated that it had decided to prioritize the submission of its observations on the admissibility and/or merits in the backlog of cases dating from 2016, before proceeding with later cases.
11. By email of 12 March 2020, the Mission informed the Panel that the complaint number 2018-01 was “in the process of review” by the Human Rights and Legal Office of the Mission.
12. On 29 March 2021, the HoM submitted his observations on the admissibility and merits of the complaint.
13. On 31 March 2021, the HoM’s observations were submitted to the complainant, who was given until 31 May 2021 to make any further submissions in response to that letter.
14. On 31 May 2021, the complainant’s representative confirmed by telephone that they did not intend to provide any further response.
15. On 16 September 2021, the Panel issued its Decision on Admissibility and Merits of the Case (<https://hrrp.eu/docs/decisions/2021-09-16%20Admissibility%20and%20Findings%20-%202018-01%20signed.pdf>). In that Decision, the Panel rejected the complainant’s request for an interim measure and the Mission’s request to strike out the complaint. The Panel found that the complaint pursuant to Article 6(2) of the European Convention on Human Rights (ECHR) was inadmissible as manifestly ill-founded but found that the complaint pursuant to Article 8 of the same Convention was admissible. The Panel found that the Mission had violated the rights of the complainant as protected under Article 8 of the European Convention on Human Rights. Therefore, the Panel invited the HoM to make a public declaration acknowledging that the circumstances of the case amounted to a breach of the complainant’s rights as a result of acts attributable to EULEX in the performance of its executive mandate and invited the Mission to report to the Panel regarding that recommendation no later than 15 December 2021.
16. On 20 December 2021, the HoM submitted the Mission’s comment to the recommendation of the Panel.
17. On 22 December 2021, the HoM’s comment was transmitted to the complainant for information.

II. COMPOSITION OF THE PANEL

18. Following the resignation of one of its External Members, the Panel will sit in this matter with only two members in accordance with Rule 14 of the Panel's Rules of Procedure.
19. One of the departing Members was replaced by Ms. Bokulić upon her appointment to the Panel. In order to ensure familiarity with the case, Ms. Bokulić acquainted herself with the record of the case, and is therefore fully able to participate in the deliberations of the case.

III. FACTS

20. The complainant is a resident of Bosnia and Herzegovina.
21. On 4 July 2014, a EULEX Prosecutor with the Special Prosecution of the Republic of Kosovo (SPRK) filed an indictment against a certain N.K. with the Basic Court of Pristina. He was charged with organized crime, aggravated murder and various drug offences, which had all allegedly taken place in Bosnia and Herzegovina.
22. The complainant's name appeared in the indictment. In particular, it was stated that the indicted N.K. *"in co-perpetration"* with the complainant and several other persons,

"did organize, establish, supervise, manage and/or direct this Structured and Organized Criminal Group (OCG) or did actively participate in this OCG, knowing that his participation will contribute to the commission of the serious crime of Aggravated Murder against rival gangster boss [R.D.] (...)".
23. The indictment further submitted that N.K. had,

"attended a number of meetings with [the complainant and other persons], in Bosnia and Herzegovina. The participants of these meetings formed an Organized and Structured Criminal Group to plan, plot and murder [sic] rival gangster boss [R.D.] (...)".
24. On 1 February 2018, the Basic Court of Pristina issued its Judgment (PKR 375/14) against N.K. and found him guilty of one count of the indictment, but acquitted him of the counts relating to participation in an Organized Criminal Group together with other persons, including the complainant.
25. On 2 February 2018, the EULEX Prosecutor assigned to the case participated in a television programme called *"Justice in Kosovo"* (*Drejtësia në Kosovë*). In this programme, the EULEX Prosecutor was interviewed, along with a number of other persons who had been involved in the trial.
26. In the course of his interview, the EULEX Prosecutor also made some references to the complainant. The EULEX Prosecutor mentioned that there was an ongoing trial in Bosnia and Herzegovina against the complainant for threatening and intimidating a witness. He also stated that the prosecution alleged that the complainant ordered the murder to be carried out by a member of the organized criminal group. Further, the EULEX Prosecutor claimed that the complainant used his media empire to destroy witnesses' reputation.
27. On 8 February 2018, the complainant wrote to the Chief EULEX Prosecutor to complain about the statements given by the EULEX Prosecutor in the interview. The complainant

referenced the Decision and Findings of 19 October 2016 of the Human Rights Review Panel in case number 2014-37, which had found a previous similar violation of the complainant's rights under Article 8 of the European Convention on Human Rights and made recommendations to the HoM of EULEX. (See: <https://hrrp.eu/docs/decisions/Decision%20and%20findings%202014-37.pdf>.)

28. In the complaint the complainant also requested certain measures to be adopted by the Chief EULEX Prosecutor.
29. By letter of 12 February 2018, the Chief EULEX Prosecutor rejected the complaints. The Chief EULEX Prosecutor, however, issued a press release on 14 February 2018 wishing to clarify "*that at no time during the criminal proceedings before the Basic Court of Pristina [complainant] was a defendant, and that there has been no judicial determination that [complainant] was involved in any way in the alleged murder.*"
30. The complainant alleges that the actions of the EULEX Prosecutor violated his rights in providing public statements which created the appearance that:
 - a. The complainant was indicted for murder in the case against N.K.;
 - b. It has been factually proven that the complainant was found to be responsible for severe acts of witness intimidation, including death threats.
31. The complainant alleges that these actions:
 - a. Violated his presumption of innocence as protected by Article 6(2) of the ECHR; and
 - b. Violated his right to a private life by damaging his reputation under Article 8 of the ECHR.
32. The complainant alleges that the gravity and harm occasioned by these violations are further aggravated by:
 - a. The fact that the EULEX Prosecutor had been previously instructed by the Judge of the Basic Court of Pristina, and the Human Rights Review Panel that such statements would undermine the complainant's protection and security, and violate his rights under Article 8 of the ECHR; and
 - b. The Mission's failure to comply fully with the directives of the Human Rights Review Panel to take specific steps to ensure that EULEX prosecutors did not commit further violations of the complainant's rights, and to issue a declaration that would have helped restore the complainant's reputation.
33. The Panel in its decision on 16 September 2021 found that the complainant's request for the proposal of an interim measure was without object, and therefore the Panel rejected the request (paragraph 103). The Panel found that the issues raised in the complaint merited further examination despite subsequent events, and therefore the Panel rejected the HoM's request to strike out the complaint (para.104).
34. Furthermore, in the Decision the Panel considered that the complainant had not substantiated his claim that the statements made by the EULEX Prosecutor in the television programme "Justice in Kosovo" had a sufficiently close connection to the proceedings in Bosnia and Herzegovina such that they violated the complainant's right to the presumption of innocence in the criminal proceedings against him in Bosnia and Herzegovina. For this reason, the Panel found that the complaint of a violation of the right to the presumption of innocence as guaranteed by Article 6(2) ECHR was inadmissible as manifestly ill-founded. (Para.105.)

35. Lastly, the Panel found that the public statements made by the EULEX Prosecutor in the television programme “*Justice in Kosovo*” on 2 February 2018 amount to an interference with the complainant’s right to respect for his reputation, and that this interference was not justified. Therefore, the Panel found that there had been a violation of the complainant’s right to respect for his private life under Article 8 of the European Convention on Human Rights. (Para.106.)

IV. FOLLOW-UP EVALUATION BY THE PANEL PURSUANT TO RULE 45 BIS

36. In its Decision on 16 September 2021 the Panel invited the HoM to make a public declaration acknowledging that the circumstances of the case amounted to a breach of the complainant’s rights as a result of acts attributable to EULEX in the performance of its executive mandate. The Panel also invited the Mission to report to the Panel regarding the above recommendations at its earliest convenience and no later than 15 December 2021.
37. On 20 December 2021 the HoM submitted the Mission’s comment to the recommendations of the Panel:

“While I take due note of the Panel’s findings in the case, I consider that the Decision speaks for itself and that a declaration acknowledging a violation of the complainant’s rights is therefore not necessary.”

38. The Panel regrets that the Mission has failed to implement the Panel’s recommendation.
39. The Panel notes that while its recommendations are not legally binding, it is essential for the credibility and legitimacy of the Mission – a rule of law mission – that it should decisively and credibly demonstrate its commitment to the effective enforcement of human rights by ensuring that its actions are at all times consistent with international human rights standards – and that it is accountable where it has fallen short of those standards. The Panel has highlighted in a number of decisions that an acknowledgment of a human rights violation can be an important and meaningful measure for the complainant. It is also a way for the Mission to ‘make amends’, in part, for its failure to respect and protect the complainant’s human rights. Regretfully the Mission has declined to do so.
40. The Panel regrets that the Mission shows disregard for its human rights obligations by failing to implement the recommendation. The Panel does not find it fruitful to repeat its recommendation given the clarity in the recommendation and the Mission’s stand in relation to it. The responsibility to provide the complainant with a remedy, through the recommendation, for the violation that the Mission is found to have committed remains even after the Panel, as now, decides to close its examination of the case.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

DECLARES that the Mission has not implemented the Panel’s recommendation;

REGRETS the Mission’s failure and unwillingness to implement the Panel’s recommendation;

DECIDES to close the examination of the case.

For the Panel,

Snježana BOKULIĆ
Acting-Presiding Member

Alexander FASSIHI
Member