



DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 07 March 2017

Case No. 2014-34

Rejhane Sadiku-Syla

Against

EULEX

The Human Rights Review Panel sitting on 07 March 2017
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Eika ERMENKOVA, Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Noora AARNIO, 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 15 January 2013,

Having deliberated, decides as follows:

I. DECISIONS OF THE PANEL OF 19 OCTOBER 2016

1. On 19 October 2016, the Panel rendered its Decision in this case, finding a violation of the complainant's rights and making the following recommendations:

"FOR THESE REASONS, THE PANEL, UNANIMOUSLY,

1. *Holds* that there has been a violation of Articles 2 and 3, and of Article 13 in conjunction with Article 2 of the Convention; and

2. *Finds* it appropriate, in the light of its above findings of fact and law, to make the following recommendations to the Head of Mission under Rule 34 of its Rules of Procedure:

- a. "The HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant's rights attributable to the acts [and /or omissions] of EULEX in the performance of its executive mandate;
- b. The HoM should instruct all organs of the Mission who are in contact with victims of alleged violations of human rights guaranteed by Articles 2 and 3 of the Convention in the context of forced disappearances to ensure that in all communications with them they communicate with the necessary amount of expeditiousness, diligence and care necessary to account for the emotional distress of their interlocutor(s). If necessary, the HoM should consider the adoption of guidelines which lay down in more precise details what this general instruction might imply in concrete circumstances.
- c. The Panel is fully aware of the challenges and difficulties which result from the reduction of the resources of the Mission due to reconfiguration etc. However, within the confines of these resources and in a manner commensurate with the importance that the Mission attaches to the effective protection of human rights, the Panel invites the HoM to ensure that investigative bodies within the Mission have at their disposal all the necessary resources and support to accomplish their mission effectively and in a manner consistent with the effective protection of the human rights of all those involved.
- d. The HoM should impress upon the EULEX investigative bodies the importance of cases of disappearance continuing to be an investigative priority so that they are fully and effectively investigated and that wherever suspects are identified that they are brought to justice promptly and fairly.

The HoM is invited to draw to the attention of the competent investigative and prosecutorial authorities within the mission to the factors listed above as being relevant to the "exceptional" competence of EULEX prosecutors and to impress upon them the importance of taking these factors into account in their assessment

of whether or not they should seek to take over responsibility for this case.”

2. The power and authority of the Panel to follow-up on its decisions and recommendations is provided for in Rule 45 bis of the Panel’s Rules of Procedure (see, e.g., the decisions on the implementation of recommendations *W against EULEX*, 2011-07, 26 August 2014; *Becić against EULEX*, 2013-03, 11 November 2015).

II. INFORMATION RECEIVED FROM THE HEAD OF MISSION OF EULEX REGARDING THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE PANEL

3. By letter of 28 November 2016, the HoM provided her response to the Panel’s recommendations.

III. EVALUATION BY THE PANEL

4. In her letter of 28 November 2016, the HoM said, amongst others, the following:

“[A] copy of the Panel’s decision has been provided to the EULEX Prosecutors. In addition, I have approved the establishment of a Human Rights Focal Point Network to ensure human rights compliance by the Divisions. An internal review of the procedures and guidelines currently in place will be part of this process. I will inform the Panel of the results of the internal review.

Some of the Panel’s recommendations concern measures that are under the competence of the Civilian Planning and Conduct Capability (‘CPCC’), several EU institutions as well as Member States. I have informed the CPCC and Contributing States of the Panel’s decision and findings through the Civilian Operation Commander. Further, I would like to emphasise that EULEX prosecutors are well cognitive of the rules and regulations applicable with regard to ‘extraordinary circumstances’ stipulated by Article 7 (A) of the amended Law on Jurisdiction.”

5. First, regarding its first recommendation (see para. 1(a) above), the Panel notes with regret that it has been the consistent practice of the

Mission to refuse or fail to formally acknowledge responsibility for a violation of the complainant's human rights where the Panel has determined that this had occurred. Such an acknowledgment would provide an important form of just satisfaction in a case like the present one to remedy the wrong done to the complainant by the Mission. This form of relief is all the more important in the present context since the Panel is not permitted to recommend any sort of monetary reparation to compensate for the prejudice caused to the complainant.

6. Concerning the recommendation that the Panel's decision and findings be circulated to all relevant organs (see para. 1(b) above), the Panel is satisfied that the HoM has taken effective steps to implement that recommendation. The Panel is also encouraged by and commends the HoM for her decision to establish a Human Rights Focal Point Network to ensure human rights compliance by the Divisions. This arrangement should help coordinate efforts within the Mission to guarantee human rights in the context of the Mission's executive mandate and thus contribute to the effective protection of those rights.
7. The Panel had also invited the HoM to ensure that investigative bodies within the Mission have at their disposal all the necessary resources and support to accomplish their mission effectively and in a manner consistent with the effective protection of the human rights of all those involved (see para. 1(c) above). Although the HoM did not directly address that recommendation, the Panel is confident that, in the continued diligent exercise of her mandate, the HoM will continue to ensure that effective protection of human rights remains a priority for all agents and organs of the Mission, including its investigative bodies.
8. The Panel had also recommended that the HoM should impress upon the EULEX investigative bodies the importance of cases of disappearances as investigative priorities (para. 1(d) above). Whilst the HoM did not expressly address this recommendation, the Panel's decision was duly communicated to the EULEX prosecutors so that the Panel is satisfied that its concern was duly and properly passed on to the competent organs of the Mission.


THE PANEL THEREFORE UNANIMOUSLY

Declares that the HoM has implemented its recommendations in this case in part only,

Welcomes the HoM's indication that the HoM will advise the Panel of the result of the internal review currently being undertaken and looks forward to receiving that information,

Decides to close the examination of this case.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member