



## DECISION ON ADMISSIBILITY

**Date of adoption: 11 September 2019**

**Case no. 2016-12**

**U.F.**

**Against**

**EULEX**

The Human Rights Review Panel, sitting on 11 September 2019 with the following members present:

Mr Guénaël METTRAUX, Presiding Member

Ms Anna BEDNAREK, Member

Ms Anna AUTIO, Member

Assisted by

Mr Ron 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 15 January 2019,

Having deliberated, decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint in this case was registered on 30 June 2016.
2. By letter of 1 July 2016, the Panel informed the Mission that this case had been registered with the Panel.
3. On 28 June 2017, the Panel requested this and other complainants to provide additional information regarding their complaints.

4. On 20 September and 17 October 2017, the Panel sent two further requests for additional information to the complainant's representative.
5. On 20 October 2017, the Panel received a response from the complainant's representative of the complainants providing additional information in relation to two cases, including the present one.
6. On 8 December 2017, the Panel transmitted a Statement of Facts and Questions to the Head of Mission (HoM) EULEX Kosovo, inviting her to submit her answers and written observations on the complaints no later than 26 January 2018.
7. By letter of 17 January 2019, the Mission was requested again to provide answers to the questions by 16 February 2019.
8. By letter of 8 April 2019, the Mission was requested to indicate when it would be able to provide answers to the questions, and once again was urged to respond as soon as possible.
9. The observations of the HoM were received on 14 June 2019 after which they were communicated to the complainants for additional observations.
10. On 5 July 2019, the complainant submitted additional observations, which were transmitted to the HoM for information.

## **II. STANDING AND IDENTITY OF COMPLAINANT**

11. Considering the close family relationship between the primary victim – i.e., as brothers – the Panel is satisfied that the complainant may be regarded as a secondary victim of the alleged violations and that, as such, a potential victim in accordance with Rule 25(1) of the Panel's Rules of Procedure.
12. The complainant of the case 2016-12 requested not to have his identity disclosed. Having considered the matter, in particular the nature of the allegations being made, the Human Rights Review Panel ("the Panel") is satisfied that the request should be granted.

## **III. FACTS**

13. The facts of the case, as appear from the complaint, may be summarized as follows.
14. On 9 March 2000, the brother of the complainant was kidnapped. He was last seen outside his family home in northern Mitrovica by his son-in-law at about 10.15 hours on that day.
15. He was also allegedly seen at another family home in Vushtrri/Vučitrn at around the same time "where he was forced into vehicle Golf 2, black color, by members of a security service". He has not been seen since.

16. His disappearance was reported to the UNMIK Police, northern Mitrovica, and thereafter to KFOR and latterly to EULEX Kosovo. The complainant also indicates that his disappearance was reported to 'other local and international organizations dealing with human rights and freedoms'. It appears from subsequent submissions that the complaint did not have direct contacts with EULEX but suggests that information provided to other institutions would have been passed on to EULEX (see, *infra*, para. 33). Regarding EULEX, in particular, the complainant told the Panel that at an unspecified date, he had spoken to a staff member of EULEX about his missing family member during a meeting of the Serb Association of Missing Persons at the time when EULEX had only recently arrived in Kosovo.

#### **IV. COMPLAINT**

17. The complainant refers to a number of treaty provisions and associated guarantees, which he says were violated by the Mission:
- i. Universal Declaration of Human Rights, Articles 1, 2, 3, 7 and 13;
  - ii. European Convention of Human Rights (hereafter, the Convention), Articles 2, 5, and 15; and
  - iii. Protocol 12 to the European Convention of Human Rights, Article 2.
18. Articles 1, 2 and 7 of the Universal Declaration of Human Rights provides for the principle of equality of treatment and a general prohibition against discrimination. Article 3 provides that everyone has the right to life, liberty and security of person whilst Article 13 guarantees everyone's right to freedom of movement. Article 2 of the European Convention protects a person's right to life, whilst Article 5 guarantees the right to liberty and security and Article 15 pertains to the derogation of rights during times of emergency. Article 2 of Protocol 12 to the European Convention of Human Rights again provides protection against discrimination.
19. In addition, consistent with its earlier practice, the Panel has given consideration to the potential relevance of Articles 8 and 13 of the Convention.
20. For reasons outlined below, the Panel has taken the view that the present case should be declared admissible in relation to alleged violations of the following provisions: Articles 2, 3, 8 and 13 of the European Convention of Human Rights (and equivalent guarantees provided in other applicable international instruments). The complaint is declared inadmissible in other respects.

#### **V. SUBMISSIONS OF THE PARTIES**

##### **The complainant**

21. As summarised above, the complainant alleges that, in the exercise of its executive mandate, EULEX Kosovo should have investigated the disappearance of his brother and culpably failed to do so in violation of his and his brother's fundamental rights.

## **Head of Mission (“HoM”)**

22. The Mission's submissions regarding the admissibility of this case were received by the Panel on 14 June 2019.
23. According to those submissions, in the framework of the hand-over of cases and case-files from UNMIK to EULEX in the period December 2008 – March 2009, the Mission staff at what is now the Institute of Forensic Medicine (IFM) received a database containing victim identification forms on individuals reported missing during and after the conflict. The said database contained a ‘victim identification form’ on the complainant’s relative. This form indicates that the complainant’s relative (hereafter, the disappeared) was last seen in Vushtrri/Vučitrn on 9 March 2000. It does not include information regarding the circumstances of that disappearance.
24. Another database handed over to EULEX by UNMIK indicated that a UNMIK Police Missing Persons Unit (MPU) case number was assigned to this disappearance presumably in 2003. However, the Mission did not receive MPU documentation in relation to it.
25. The only other document received by EULEX as part of the hand-over from UNMIK relates specifically to this disappearance, is an unsigned request dated 18 December 2001 filed by a lawyer [presumably on behalf of the family of the disappeared] and addressed to the District Court in Mitrovica, to expand an ongoing investigation against several suspects with a view to include in it the alleged kidnapping of the disappeared and other individuals.
26. The Mission further suggests that it has no records of the complainant having brought the disappearance of his brother to the attention of the Mission’s police and prosecutorial units. The Mission also notes that, according to its records, there was no involvement of the Mission in relation to the disappearance of the complainant’s relative.
27. In response to the Panel’s query on that point, the Mission has provided an extensive explanation of the complex process of receiving, recording, categorising, storing and reviewing of files received from UNMIK. The Mission points in that context to the difficulties involved and the challenge it represented from the practical and logistical point of view. The effect and consequences of some of the facts outlined in this context will be considered by the Panel at the merit stage where relevant.
28. The Mission also indicated that it is not aware of any ongoing investigation by Kosovo authorities into this case and ‘invites the complainant to address this question to the competent Kosovo institutions’.
29. Finally, regarding the question of the Mission’s compliance with its human rights obligations, the Mission first point to case-law and principles arising from the jurisprudence of the European Court of Human Rights regarding the ‘reasonable expedition’ expected of complainants in the submission of a complaint in cases of alleged ongoing violation of human rights. Applying those standards to the present

case, the Mission submits that the complainant (or other relatives) never contacted the Mission and submits that the delay in filing a complaint with the Panel (17 years since the disappearance) is both ‘excessive’ and ‘unexplained’. On that basis, the Mission submits that the complaint should be declared inadmissible *ratione temporis*.

30. On 21 August 2019, the Panel sought clarification from the Mission as to whether a casefile regarding this case had been transmitted to the local Kosovo authorities at the time of the Mission’s transition in June 2018.
31. By an email of 23 August 2019, the Mission clarified the matter as follows:

“[T]he victim identification form concerning the relative of U.F. like all other ‘victims identification forms’, has been accessible to the local authorities since the very beginning of EULEX mandate. As far as the lawyer request mentioned on page 2 of the EULEX responses dated 14 June 2019 is concerned, that document has been transferred to the local authorities as part of the hand-over process which was completed by 14 December 2018. We would like to point out however, that EULEX Kosovo did not receive the original document from UNMIK but only a photocopy; the Mission is not aware of where the original document may be.”

### **Complainant’s response**

32. On 5 July 2019, the complainant made additional submissions, which were then forwarded for information to the Mission.
33. In these submissions, the complainant takes particular issue with the Mission’s suggestion that the matter was not brought to the attention of the Mission. In particular, the complainant points to the fact that ‘a report on a missing person in the territory of Kosovo and Metohija after the post-conflict situation required urgency and efficiency in the actions of the authorized bodies, as any delay could affect the outcome of the investigation’. The complainant adds that should the Mission have failed to properly record and organise its records, such a failure could not be blamed onto others and should not affect the merit of his complaint.
34. The complainant notes, furthermore, that it has no information regarding the material that was communicated by UNMIK to EULEX considering that neither organisation ever got in contact with him.
35. The complainant also says that the responsibility of the Mission to investigate cannot be dictated by way in which UNMIK had labelled or organised those files and cannot affect its human rights obligations:

“From the moment those casefiles were handed over to it, the Mission was responsible for their efficient review and investigation.”

36. The complainant has no information regarding what steps, if any, the Mission took to investigate this case. Nor was the cooperation of relatives sought and the complainant

is unaware of any efforts to investigate this case. No documents pertaining to the case were ever provided to the family. The complainant adds the following:

“The fact that the authorities, competent for carrying out the investigation into the missing of [redacted], kept changing one after the other, can in no way be the justification for passive behavior/inaction on the part of the authorities, nor can it be assigned as a burden to the family of the missing person. The authorities were responsible to act on the reported missing, to examine and investigate it, to carry out a proper investigation, to involve the family in the proceedings, and to report on actions taken. This has in our case, we repeat, never been done.”

37. In response to the Mission’s suggestion that the complainant had failed to put forth relevant legal arguments regarding the responsibility, the complainant says the following:

“What the [redacted by the Panel] family expects is the finding of [the victim – redacted by the Panel], who went missing in life threatening circumstances, which was in good faith entrusted by the family to the competent authorities. However, the rationale that the complaint “**includes only numbers of allegedly violated articles and**” indicates how the Mission regards the European Convention on the Protection of Human Rights and Freedoms and the victim’s family. Also, on what basis does it conclude that such articles and relevant international instruments are “**allegedly**” violated, if the family does not know whether the investigation was ever carried out.

Regarding the reference to the International Human Rights Court case *Varnava et al against Turkey* and the listing of ungrounded arguments referring to the mentioned Decision, we must say that the interpretation of this Decision is absolutely not applicable to the Case No. 2016-12, UE against EULEX.

Firstly, the rights invoked by the Complainant are among the basic principles, rights and freedoms underlying and guaranteed by the international convention on human rights. Secondly, EULEX prosecutors are mandated to investigate the violation of rights invoked by the Complainant regardless of the actions of the Complainants, or referred to by them as “unnecessary delay”. Third, a comprehensive and efficient investigation is important for building the feeling of accountability and care for rule of law in any post-conflict society, because the responsibility must be shared by the society as a whole, not only by those who are directly affected.

I remind you that this case is about a person of Serbian nationality, who disappeared in life threatening circumstances in an ethnically clean environment, which was inhabited by Albanians after the war, and that we suspect that he was murdered, that the family took all the necessary actions in terms of reporting the missing to the competent authorities, that at no time was the family involved in the pre-investigation/investigation proceedings by the authorities, and that it suspects that this case has never been effectively investigated. It is inappropriate in the absence of any information from UNMIK and EULEX to impose on the victim and the victim’s family the notion of “unnecessary delay”, considering that the family was never informed about the results of the investigation, so in this specific case we cannot talk about “disinterest”, given that the missing was

reported to all institutions, the complaint was submitted in June 2016, when the family became aware only in 2016 that the investigation was not efficiently carried out (see *Brunner against Turkey* (Dec. No. 10/10; *Varnava et al against Turkey* (GC), as above, §157).

We note that [redacted by the Panel] family did not intend to bring the case before the court in Strasbourg, but it expected the investigations would be carried out, that [the victim – redacted by the Panel] would be found live or not alive, that it would find out how he was murdered, who murdered him, and the whereabouts of his [remains], and not the relation between UNMIK and EULEX in the handover of responsibilities, or the relation of these bodies with the Kosovo Police, or their “respect for the pain of the Complainant and the members of his family.”

## VI. THE PANEL’S ASSESSMENT

*Mandate of the Panel (Rule 25 par. 1 of the Rules of Procedure)*

38. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.
39. Before considering the complaint on its merits, the Panel has to decide whether to proceed with the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
40. 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.
41. The Panel has already decided in past cases that complaints such as the present one came in principle within the scope of its competence. There is no cogent reason to depart from that view in relation to the present complaint. The Panel must reiterate in this context that the investigation of cases of ‘enforced disappearance’ did not only form part of the Mission’s mandate, it was a core and essential element thereof. In L.O. against EULEX, the Panel thus underlined that ‘there can be little argument that investigating the fate of the disappeared – regardless of religion or ethnicity – must be and must remain an operational priority for EULEX as a Rule of Law Mission for which it must be provided with adequate resources’ (L.O. against EULEX, case No. 2014-32, Decision and Findings, 11 November 2015, para. 47).

*Compliance with the 6-months rule and competence ratione temporis*

42. As discussed above (see, *supra*, para. 29), the Mission drew the Panel’s attention to case-law from the European Court of Human Rights regarding the principle of reasonable expedition in regards to the filling of complaints and submitted that the

present complaint fell short of such standard and should be declared inadmissible on that basis.

43. As a preliminary matter, the Panel should point out that the conditions of admissibility are laid out in its Rules of Procedure. Regarding timing, the Rules provide for the following conditions (Rule 25, paragraphs 2-4):
  2. The Panel will only examine complaints concerning alleged human rights violations that occurred after 9 December 2008 in Kosovo.
  3. Complaints must be submitted to the Panel within six months from the date of the alleged violation.
  4. Notwithstanding paragraph 3, complaints relating to cases transferred from EULEX to Kosovo institutions, shall be filed within six months from the end of the EULEX Executive Mandate in the criminal justice system as defined in Kosovo law or within six months from the transfer of the case file.
44. On that basis, '[c]omplaints must be submitted to the Panel within six months from the date of the alleged violation'. See, e.g., *Gashi v EULEX*, 2013-22, 7 April 2014, para. 10; *Thaqi v EULEX*, 2010-02, 14 September 2009, para. 51.
45. In application of these provisions, the Panel has held that if the violation of fundamental rights is ongoing, the 6-month deadline has not lapsed in principle until the violation ceases. See, e.g., *Zahiti against EULEX*, 7 June 2013, par 42. In such a case, the deadline starts to run on the date after the impugned action said to have caused or resulted in a right violation. See, e.g., *Y against EULEX*, 15 November 2012, pars 30-31. In this instance, the alleged violation was continuous and ongoing until June 2018 when the mandate of the Mission changed and it lost the ability to investigate (or continue to investigate) such cases.
46. The Rules do not set any other requirement of time or 'reasonable expeditiousness' that would regulate or condition the admissibility of a complaint before the Panel in addition to the above-mentioned requirements. For that reason alone, the Panel could dismiss the Mission's argument as irrelevant and the cited authorities as inapplicable to these proceedings. It would indeed be unfair to declare a case inadmissible based on a requirement that does not form part of the Panel's normative framework.
47. However, as was acknowledged in case 2017-02, the principle of 'reasonable expeditiousness' applied before the ECtHR generally seeks to preserve the effectiveness of the rights of a complainant whilst at the same time avoiding undue delays which might affect that goal and create a state of permanent legal uncertainty. See *Zufe Miladinović against EULEX*, 2017-02, 27 March 2019, para. 50. This is a goal that the Panel is also minded to preserve in the context of its mandate whilst accounting for the specificities of that mandate, as discussed below. See also D.W., E.V., F.U., G.T., *Zlata Veselinović*, H.S., I.R. Against EULEX, Case No. 2014-11, 2014-12, 2014-13, 2014-14, 2014-15, 2014-16, and 2014-17, 30 September 2015, paras. 94-97; *Rejhane Sadiku-Syla Against EULEX*, Case No. 2014-34, 29 September 2015, paras. 43-48; *Dragiša Kostić Against EULEX*, Case No. 2016-10, 19 June 2019, paras. 37-45.

48. In trying to resolve this matter, the Panel notes the following. First, if the complainant's submissions are accepted, the alleged violation of his rights would have been ongoing all through the relevant time until June 2018, i.e., even *after* he had filed his complaint with the Panel.
49. Second, the Mission's competence and responsibility to investigate this sort of cases existed, *proprio motu*, as a matter of law. It did not depend and was not conditioned by the relatives of the disappeared having formally requested it or having contacted the Mission to that effect. In a case such as the present one, EULEX is indeed responsible to act *proprio motu* with a view to ensuring that the disappearance is being diligently, promptly and effectively investigated. See, e.g., L.O. against EULEX, 2014-32, Decision and Findings, 11 November 2015, para. 63, and its references to ECtHR: Ahmet Özkan and Others v. Turkey, Application no. 21689/93, judgment of 6 April 2004, para. 310; Isayeva v. Russia, Application no. 57950/00, judgment of 24 February 2005, para. 210. See also, generally, Sadiku-Syla against EULEX, 2014-34, Decision and Findings, 19 October 2016, para. 41; L.O. against EULEX, 2014-32, Decision and Findings, 11 November 2015, para. 63; Sadiku-Syla against EULEX, 2014-34, 29 September 2015, para. 46 ("the competence of EULEX Prosecutors to investigate alleged violations of these rights is independent of any complaint filed by the victims or their relatives so that there was a legally-grounded expectation that they would look into this case regardless of the complainant's actions."); D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX, 2014-11 to 2014-17, Decision on Admissibility, 30 September 2015, para. 97.
50. The Mission would therefore have been under an obligation to investigate from the moment when it was put on notice of the existence of that case (i.e., late 2008 – early 2009). And, under the applicable regime, it would have been competent to initiate such an investigation *proprio motu* until May/June 2014 and, after that time, under the "extraordinary circumstances" clause of the revised Law on Jurisdiction. Thus, in *Sadiku-Syla*, the Panel said the following:

"[T]he HoM submits that the new legislation that entered into force on 17 May 2014 has "considerably reduced the possibility for EULEX Prosecutors and Judges to exercise executing functions in new cases" (Response, p 6, referring to the Omnibus Law that amended the Law on Jurisdiction). The Panel notes, however, that Article 7(A) provides for "Authority of EULEX prosecutors in extraordinary circumstances": "In extraordinary circumstances a case will be assigned to a EULEX prosecutor by a joint decision of the Chief State Prosecutor and EULEX KOSOVO competent authority." The HoM has failed to explain why this provision would not provide an adequate legal basis on which EULEX Prosecutors should act, in particular in a case such as the present one where the local authorities do not appear to be investigating. The Panel would invite the parties to address this matter should they wish to make additional submissions in regard to the merit of this case."

*Sadiku-Syla* against EULEX, 2014-34, 29 September 2015, para. 62. See also, D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX, 2014-11 to 2014-17, 30

September 2015, para. 90; Sadiku-Syla against EULEX, 2014-34, 19 October 2016, paras. 23 et seq.

51. The Panel notes, furthermore, that under the revised OPLAN, as reflected in Rule 25(4) of the Panel's Rules of Procedure, complaints relating to cases transferred from EULEX to Kosovo institutions shall be filed within six months from the end of the EULEX Executive Mandate in the criminal justice system as defined in Kosovo law or within six months from the transfer of the casenfile. Considering that the transfer of this case was completedd in December 2018, the deadline for filing of a complaint had not yet expired at the time of filing of the present complaint.
52. Third, it would appear from the Mission's submissions that the case was transmitted to the Mission as an 'open' or 'ongoing' case by UNMIK since no remains of the disappeared had been found and no decision was ever formally taken to close it. In other words, the case was in UNMIK's files and then in the Mission's files though it remained inactive for almost two decades.
53. Fourth, it is apparent from its submissions that the Mission took no step to contact or interview relatives of the disappeared; nor did it provide any of the information in its possession to those relatives. In those circumstances, it is unclear whether relatives of the disappeared ever became aware that the Mission had in its possession information pertaining to his disappearance. In fact, it would seem from the complainant's submissions that they learnt about this from the HoM's submissions in this case.
54. Fifth, when assessing the conduct of the complaint in this case, one should consider a number of factors:
  - i. One pertains to the nature of the acts in question. In a case of this nature, '[a]llowances must be made for the uncertainty and confusion which frequently mark the aftermath of a disappearance'. See *Varnava and Others vs Turkey* paras 162-163; and *Zufe Miladinović against EULEX*, 2017-02, 27 March 2019, para. 51. The Panel agrees. The Court then holds that 'the serious nature of disappearances is such that the standard of expedition expected of the relatives cannot be rendered too rigorous in the context of Convention protection'. See *Varnava and Others vs Turkey* paras 162-163; and *Zufe Miladinović against EULEX*, 2017-02, 27 March 2019, para. 51.
  - ii. Consideration must also be given to the fact that a number of institutions were successively responsible to 'do something about' this case: UNMIK; EULEX Kosovo; and now local authorities. Other institutions also played a role in relation to cases of enforced disappearance, including the ICRC. The complainant and his relatives in this case reported this case to quite a few of those organisations (see, *supra*, para. 16). In that sense, they could hardly be said to have been inactive. Instead, none of these institutions seemingly conducted an investigation of this case. Furthermore, as is apparent from the complainant's submissions of 5 July 2019, he might have been genuinely confused by the succession of authorities which were supposed to investigate this case. And it was perhaps not entirely unreasonable on his part to assume

that, having notified the organisation responsible to investigate the case at the time closest to the disappearance (i.e., UNMIK) it was not again necessary to contact once again the organisation that took over from it (i.e., EULEX Kosovo).

- iii. Another significant specificity characterizing the work of this Mission and the computation of time to file a complaint before the Panel is the fact that this Mission was created a decade after the events of relevance. After that time, it took additional years for the Mission to start investigating cases of the sort now under consideration. In that sense, before a complainant could even think of filing a complaint with the Panel alleging a culpable failure on the part of the Mission, more than a decade would per force have already passed. This particular state of affair must necessarily be accounted for when deciding whether a complainant acted in timely fashion when complaining about the Mission's failure to act.
  - iv. Also relevant in the present context is the fact that, as victims of Serbian ethnicity, it would at least for some time have been personally and practically complicated to seek the assistance of the authorities in Kosovo.
55. Furthermore, whilst it does not attach great weight to this fact, the Panel notes that the complainant recalls having raised the issue of his relative's disappearance with a staff member of EULEX, although the date and exact tenor of that encounter are mostly unknown.
56. When deciding whether there still was a reasonable prospect of an investigation in this case, the following should be noted. First, the Mission had in its possession information pertaining to that case that should, at the very least, have required of its organs to consider whether or not to initiate an investigation. Why it seemingly opted not to conduct such an assessment is unclear. In this regard, one might have expected that possible lines of investigation – in particular, the interviewing of those present at the time of disappearance; the interviewing family relatives, who might possess relevant information; investigation of similar cases in the area at the time; investigation of possible known perpetrators or units active in the area at the time – would have been explored with a view to determine the possibility and viability of an investigation. It is not unreasonable to assume that, should these have been explored, a decision on whether to initiate a full investigation might have been taken. Second, as noted above, the investigation and prosecution of this sort of cases laid at the very core of the Mission's Rule of Law responsibilities and the Mission did indeed investigate a number of such cases decades after the disappearance of victims. On that basis, it would not have been unreasonable to assume that it could have investigated this case as well. With hindsight, it might seem naïve that the complainant would have placed his faith in the possibility of an investigation under EULEX supervision for so many years, but such an expectation was not unreasonable in light of the considerations outlined above and in light of the Mission's core responsibility regarding this type of cases. Furthermore, as pointed out by the ECtHR, it might not be unreasonable for a relative of a disappear to wait for several years 'until hope of progress [is] being made has

'effectively evaporated' (*Varnava and Others v Turkey* paras 162-163; *Zufe Miladinović against EULEX*, 2017-02, 27 March 2019, para. 50-51).

57. Furthermore, whilst submitting that there was no realistic prospect of an investigation in this case, the Mission fails to explain why that is and why, in particular, no evaluation of that possibility was seemingly conducted at the time based on the material received from UNMIK and why the Mission failed to reach out to relatives of the disappeared to obtain information prior to making that evaluation.
58. Furthermore, the delay in the filing of the complaint alleged by the Mission did not appear to have caused it any prejudice as far as proceedings before the Panel are concerned. See *Zufe Miladinović against EULEX*, 2017-02, 27 March 2019, para. 59. The interest that the Mission might have in the strict enforcement of the 6-month deadline must also be interpreted in that light.
59. Therefore, in light of all those circumstances, the delay imputed to the complainant cannot be said to be either excessive or unexplained as the complainant continued to prompt and contact those authorities which the complainant thought could help move this investigation forward. There remains a strong and compelling interest, to this day, for this matter to be fully and effectively investigated.
60. In those circumstances, the Panel is satisfied that the complainant met the requirements of the Rules and that his complaint was filed in timely fashion. However, the fact that so much time has elapsed since the disappearance of the complainant's relative might affect the relief that the Panel could grant should the complaint succeed on its merit.
61. The Panel notes that, *ratione temporis*, it is competent to consider the actions of the Mission until 14 June 2018. After that date, the Mission ceased to have any executive responsibilities in relation to that case. Activities carried out after that date could be relevant, however, to evaluate the extent to which the Mission might be said to have fulfilled its human rights obligations. The Panel therefore invites the Mission to make reference in its submissions to any effort undertaken by the Mission to ensure that this case was or is being investigated (if any), including after that date.

#### *Other rights allegedly violated by the Mission*

62. Without prejudging the merit of the matter, the complaints is to be declared admissible in relation to the rights protected under Articles 2, 3, 8 and 13 of the European Convention of Human Rights.
63. The complainant also submitted that his rights under the following provisions had been violated by the Mission: a) Universal Declaration of Human Rights, Articles 1, 2, 3, 7 and 13; b) European Convention of Human Rights, Articles 5, and 15; and c) Protocol 12 to the European Convention of Human Rights, Article 2.
64. Except for the rights protected under Article 13 of the Convention, the Panel has not found enough factual support in the documents submitted to declare the complaint

admissible in relation to any of the other listed rights. In particular, the Panel has found no basis in support of the suggestion that the complainant would have been discriminated against by the Mission in violation of Protocol No. 12 to the ECHR.

**FOR THESE REASONS, THE PANEL UNANIMOUSLY**

**DECLARES ADMISSIBLE**, without prejudging the merit of the matter, the complaints with regard to alleged violations of Articles 2, 3, 8 and 13 of the European Convention of Human Rights; and

**DECLARES** the complaint inadmissible in other respects;

**ASKS THE PARTIES TO ADDRESS THE FOLLOWING QUESTIONS:**

i. **The Mission:**

1. What step(s), if any, were taken by the Mission or any of its organs to investigate this case?
2. In paragraph 24 above, the following is noted: A database handed over to EULEX by UNMIK indicated that a UNMIK Police Missing Persons Unit (MPU) case number was assigned to this disappearance presumably in 2003. However, the Mission did not receive MPU documentation in relation to it. Did the Mission ask for this documentation? If so when and what was UNMIK's response to that request?
3. Have any of the documents received from UNMIK in relation to this case been communicated to relatives of the disappeared? If not, why?
4. Has the Mission violated or contributed to the violation of the complainant's rights under Articles 2, 3, 8 and 13 of the Convention? If so, in what manner?

ii. **The complainant:**

1. What contact, if any, did you have with the EULEX Mission or its representatives?
2. Are you aware of any efforts by local authorities to investigate this case?
3. Has the Mission violated or contributed to the violation of the complainant's rights under Articles 2, 3, 8 and 13 of the Convention? If so, in what manner?

4. What are the consequences – personal, financial, legal and emotional – associated with the disappearance of your relative?

**ASKS** the parties to respond to the above questions and to make any other submissions regarding the merit of this case no later than 11 November 2019.

For the Panel:

Guénaël METTRAUX  
Presiding Member

Anna BEDNAREK  
Member

Anna AUTIO  
Member