



DECISION ON ADMISSIBILITY

Date of adoption: 11 December 2019

Case nos. 2016-17

Milijana Avramović

Against

EULEX

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

Mr Guénaël METTRAUX, Presiding Member
Ms Anna BEDNAREK, Member
Ms Anna AUTIO, 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 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.
3. On 28 June 2017, the Panel requested the complainant to provide additional information regarding her complaints.
4. On 20 September and 17 October 2017, the Panel sent two further requests for additional information. The Panel did not receive any response in relation to this case.

5. 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.
6. By letter of 17 January 2019, the Mission was requested again to provide answers to the questions by 16 February 2019.
7. By letter of 8 April 2019, the Panel again requested the HoM to provide answers to the questions as soon as practical.
8. On 20 June 2019, the complainant was informed that the Panel was still in the process of examining her complaint.
9. The observations of the HoM were eventually received on 30 July 2019 after which they were communicated to the complainants for additional observations.
10. On 5 August 2019, the comments of the Acting HoM were forwarded to the complainant, and she was asked to submit her comments, if any, no later than 6 September 2019.
11. The complainant did not avail herself of the opportunity to reply to the Mission's submissions.

II. FACTS

12. The facts, as they appear from the complaint, may be summarized as follows.
13. On 19 June 1999, at about 07.30 hours, the complainant's husband, Milorad Avramović, was abducted with four other men and a woman at St. Starca Vujadina 3/1, Tamnik, Mitrovica. At the time of his abduction, he was in the process of helping the above-mentioned woman to move house by truck from south Mitrovica to north Mitrovica.
14. The abductees were taken to another house close-by in Tamnik, Mitrovica, where they were interrogated for a couple of hours. Three of the men and the woman were then released into the custody of KFOR soldiers. The KFOR soldiers contacted UNMIK Police who took them back to north Mitrovica. Milorad Avramović and the driver of the truck were held overnight. The driver of the vehicle was released the following morning. There has been no trace of Milorad Avramović since that time.
15. The complainant reported the disappearance to UNMIK, to KFOR, to the ICRC and to local Non-Governmental Organisations in Mitrovica.
16. On 14 June 2000, a sister of Milorad Avramović provided a witness statement on the disappearance of her brother to an investigating judge at the District Court of Leskovac, Republic of Serbia. This statement and other information of relevance are contained in the case file.

III. COMPLAINT AND STANDING OF THE COMPLAINANT

17. The complainant does not in her complaint expressly refer to any legal provisions which she alleges were violated by the Mission. However, from the substance of the complaint it would appear that the complaint pertains to the rights protected under Articles 2 (right to life) and 3 (prohibition on torture and cruel treatment) and possibly 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the European

Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).

18. Considering the close family relationship between the primary victim – Milorad Avramović – and the complainant – Milijana Avramović – 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. The Panel notes, furthermore, that the complainant's standing is not being challenged by the Mission.

IV. THE LAW

19. Based on the substance of the complaint, the Panel understands the complainant to allege that EULEX infringed upon her rights under Articles 2, 3, 8 and 13 of the Convention.
20. The same fundamental human rights are guaranteed by a number of other international human rights instruments, including the International Covenant on Civil and Political Rights and as a matter of customary international law.

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 her husband and culpably failed to do so in violation of her and her husband's fundamental rights.

Head of Mission ("HoM")

22. By letter of 30 July 2019, the HoM responded to the Panel's queries regarding this case.
23. To the question of whether the Mission had been aware of the existence of that case, the Mission said that, as part of the transfer of cases from UNMIK to the Mission, it received several documents regarding the disappearance of Mr Avramović. The EULEX War Crimes Investigation Unit (WCIU) received documents from a file opened by the UNMIK Missing Persons Unit, as well as documents from a file opened by the UNMIK War Crimes Unit. The Mission staff at the Institute of Forensic Medicine (IFM/DFM) also received a number of documents including some originating from French KFOR and UNMIK Police Mitrovica Station. At the time of the hand-over of case-files from UNMIK to EULEX, the EULEX WCIU received a 'war crime' case file relating to Mr Avramović (containing documents handled by the UNMIK War Crimes Unit) and separately a 'missing person' file pertaining to him.
24. The Mission indicated that, according to its records, the complainant never brought the disappearance of her husband to the attention of the Mission.
25. Regarding the question of what measures, if any, it had adopted to record, store and categorize such cases, the Mission gave an extensive explanation of the process of hand-over of cases from UNMIK and the process of reviewing and categorizing those at Mission level.

26. As a whole, the 'war crimes' and 'missing persons' files handed over by the UNMIK Police to the EULEX WCIU comprised approximately 800,000 pages. In addition to these files, UNMIK also handed over several databases, including one for the 'war crimes' police files and one for 'missing persons' cases.
27. In the case of Mr Avramović, the case-file was in fact made up of a 'war crime' file and a 'missing person' file in addition to which there were documents originating from other (UNMIK) sources (see, above, para. 23). Mr Avramović's case was classified by UNMIK as 'open' or 'pending' due apparently to the fact that neither he nor his remains had been located.
28. The war crime case file relating to Mr Avramović was sent for review and assessment to the EULEX SPRK on 20 March 2009.
29. The Mission added that the content of the police 'war crimes' files and the 'missing persons' files were not compared or merged by the Mission upon the hand-over of those files. Priority was seemingly given to the 'war crimes' files 'based on the consideration that a comprehensive cross-check of all files would have required putting on hold at least in part the work on the open investigations inherited from UNMIK'.
30. Categorization of cases was a 'major challenge' for EULEX due to the magnitude of the matter and the inadequacy of some of UNMIK's classification. At the time of hand-over, the case-file of Mr Avramović was that of a 'missing person'. To address this challenge, EULEX had to conduct several reviews of UNMIK's files. This cumbersome process was further complicated by issues pertaining to staff and reconfiguration of the Mission, which resulted in certain case-files missing documents, reports or photographs.
31. After review by the Mission, the war crimes case file pertaining to Mr Avramović was categorized by SPRK as a war crime/kidnapping case and it received an SPRK number.
32. Following the review of the case-file, on 23 July 2009, the SPRK Prosecutor requested the WCIU to conduct an investigation into that case. However, the WCIU did not follow up on this specific request.
33. In 2010 and 2013, further reviews of EULEX's holdings were conducted. The Mission did not indicate if and how this impacted the case of Mr Avramović.
34. In April 2018, the case file pertaining to Mr Avramović was handed over to the competent Kosovo institutions. The hand-over note addressed to the (then) Chief Prosecutor of the SPRK contained an invitation to liaise with the EULEX WCIU regarding the actions undertaken in connection to the request to conduct an investigation of July 2009.
35. In its submissions, the Mission indicated that it was not aware of any ongoing investigations of this case by Kosovo authorities.
36. To the question of whether relatives of Mr Avramović were involved in the investigation of this case and whether they had been interviewed by the Mission, the HoM said that the complainant gave statements to KFOR in June 1999 and to UNMIK Police Mitrovica Station in December 1999. And in June 2004, the complainant and the father of the disappeared were interviewed by the UNMIK Missing Persons Unit. The Mission had no contact with the complainant or relatives of Mr Avramović. Documents from the case-files or their content do not appear to have been communicated to Mr Avramović's family.
37. To the question of whether witnesses or potential suspects were questioned, the Mission appears to suggest that EULEX conducted no such questioning or interviews.

38. Finally, regarding the admissibility of the case, the Mission indicates that it ‘sees no obvious reasons to challenge the admissibility of the complaint on any ground’. However, the Mission invites the Panel to ‘carefully consider’ whether the complainant can be deemed to have complied with the six months rule. Additionally, the Mission suggests that the complainant does not make any specific allegations against EULEX and does not even mention EULEX in her complaint. The Mission therefore ‘requests the Panel to assess whether case 2016-17 can be considered an actual complaint against the Mission and should not otherwise be treated as a mere and legitimate request for information on the status of the investigation’.

Complainant’s reply

39. The complainant did not avail herself of the opportunity to reply to the mission’s submissions.

VI. THE PANEL’S ASSESSMENT REGARDING ADMISSIBILITY

Preliminary matter

40. As a preliminary matter, the Panel notes that the Mission does not formally challenge the admissibility of this case but invites the Panel to consider the issue of the complainant’s compliance with the 6-month deadline under Rule 25, paragraph 3, of the Panel’s Rules of Procedure and the nature of her submissions as a complaint against EULEX (see, *supra*, para. 38).

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

41. 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.
42. 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.
43. 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.
44. The Panel has already established that the actions of the EULEX prosecutors and police form part of the executive mandate of EULEX Kosovo and therefore fall within the ambit of the mandate of the Panel, (see, for instance, *K to T against EULEX*, 2013-05 to 2013-14, 21 April 2015, para. 43; *Krlić against EULEX*, 2012-21, 26 August 2014, para. 23; *Y against EULEX*, 2011-28, 15 November 2012, para. 35).
45. The Mission does not dispute that it was competent for a period of time to investigate this case and that it took certain steps pertaining to this case and that the case-file was eventually handed-over by the Mission to local authorities in April 2018. This is the period of concern and relevance to the present case.

46. The implications of the changes in the mandate of the Mission in June 2018 for the purpose of this case will be addressed, if necessary, in the Panel's decision on the merit. Parties are invited to address that issue if they wish to make further submissions in relation to the merit of this matter.

Whether the complaint meets relevant requirements of form and substance or whether it constitutes a request for information regarding the state of the investigation

47. In its submissions, whilst not directly challenging the admissibility of this case, the Mission suggests that the complainant does not make any specific allegations against EULEX and does not even mention EULEX in her complaint. The Mission therefore 'requests the Panel to assess whether case 2016-17 can be considered an actual complaint against the Mission and should not otherwise be treated as a mere and legitimate request for information on the status of the investigation'.
48. The requirements of form and substance regulating the content of a complaint before the Panel are outlined in the Panel's Rules of Procedure (see Rules 25 and following). Assessed against these Rules, the Mission does not suggest that the complaint contains any formal defect that would affect the admissibility of this case.
49. Regarding the question of the nature of the complaint and whether it concerns acts attributable to the Mission, the Panel would highlight the following. Firstly, consistent with its Rules of Procedure (and the OPLAN), the Panel is only competent to assess complaints of rights violations *against the Mission*. Rule 25, paragraph 1, of the Panel's Rules of Procedure thus provides that '[a] complaint may be filed by any person other than EULEX Kosovo personnel who claims to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate'. In that sense, the filing of a complaint with the Panel must per force and can only pertain to an allegation of rights violation said to be attributable to the Mission.
50. Second, regarding the substance of the complaint, as is apparent from the complaint form used by this and other complainants, all complaints to the Panel contain an allegation of a rights violation (see complaint form, let B) that is attributed, as per the complaint form, to EULEX (see complaint form, point V). This complaint is therefore properly a complaint of rights violations against the Mission.
51. The Mission is correct, however, that part of the relief sought by the complainant appears to pertain to information regarding the state of the investigation of this case. This will be a matter to be addressed by the Panel at the merit stage of these proceedings.

Compliance with the 6-months rule

52. In its submissions, the Mission invites the Panel to 'carefully consider' whether the complainant can be deemed to have complied with the six months rule.
53. Pursuant to Rule 25, paragraph 3, of the Panel's Rules of Procedure, a complainant is required to file a complaint within six months from the act, decision or conduct which is said to amount to or involve a violation of his/her rights (see, e.g., *Gashi v EULEX*, 2013-22, 7 April 2014, para. 10; *Thaqi v EULEX*, cited above, para. 51).
54. The complaint in that case was filed on 30 June 2016 with the Panel.
55. At that time, the alleged violation of the complainant's rights was still ongoing insofar as the circumstances of her relative's disappearance had not been established and no one had been brought to justice. The Panel notes in that regard that the sort of violations

complained of are regarded as ongoing or continuing violations of rights. See *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. 78; *Sadiku-Syla against EULEX*, 2014-34, Decision on Admissibility, 29 September 2015, paras. 35 and 42. See also, in the context of Article 3, ECtHR, *Kurt v. Turkey*, judgment of 25 May 1998, Reports of Judgments and Decisions 1998- III, paras. 130-134; *Khadzhaliyev and Others v. Russia*, Application no. 3013/04, judgment of 6 November 2008, paras. 120-121; *Timurtas v Turkey*, Application no. 23531/94, Judgment of 13 June 2000, para. 95; see also Resolution No. 828 of 1984, paragraph 3 (Parliamentary Assembly of the Council of Europe); *case of the Rio Negro Massacres v. Guatemala* (Jdgt of 4.09.2012, Prelimin. objection, merits, repair. and costs), para 112 *case of Gudiel Alvarez et al. ("Diario Militar") v. Guatemala* (Jdgt of 20.11.2012; Merits, Reparations and costs), para 191.

56. To that extent already, the complaint was filed within the required 6-month of Rule 25(3) of the Panel's Rules of Procedure, which commences 'from the date of the alleged violation'.
57. The Panel notes, furthermore, that the case and the file associated with it remained with the Mission until April 2018 when it was handed over to the local authorities. Up until that time, the Mission gave no indication to the complainant or to any other relative of Mr Avramović that it would close or had closed this matter. Instead, from the Mission's submissions, it would appear that a SPRK request for investigation remained pending up until that time.
58. In those circumstances, the Panel is satisfied that the complainant filed her complaint with the Panel the 6-month deadline set by the Rules.
59. 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 did not have any executive responsibilities over that case. Activities carried out after that date could be relevant, however, to evaluating the extent to which the Mission has fulfilled its human rights obligations as this obligation is still binding on the mission even after the end of its executive mandate. 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 being investigated (if any), including after that date.

The Panel's competence ratione materiae

60. The Mission does not challenge the Panel's competence *ratione materiae* over this case and the Panel is indeed satisfied that it is competent over the present matter. The case clearly fell within the executive (investigative) competence of organs of the Mission, which actually reviewed the case-file of this case and recommended further investigation.
61. Consistent with earlier cases pertaining to similar matters, the Panel is therefore competent *ratione materiae* over this case.

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;

ASKS THE PARTIES to address the following questions:

1. **The complainant:** Please provide information pertaining to the following:
 - i. What contact, if any, did you have with the EULEX Mission or its representatives?
 - ii. Are you aware of any efforts by local authorities to investigate this case?
 - iii. 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?
 - iv. What are the consequences – personal, financial, legal and emotional – associated with the disappearance of your relative?

2. **The Mission:** Please provide information pertaining to the following:
 - i. Why didn't WCIU follow up on the request of the SPRK Prosecutor (see, supra, para. 32)? To your knowledge, was there further communication between them regarding this matter?
 - ii. Why did the Mission not seek to contact relatives of Mr Avramović?
 - iii. Has the Mission considered informing the relatives of those disappeared whose files have been transmitted to local, Kosovo, authorities of the existence of these files?
 - iv. Has consideration been given to the possibility for the relatives of the disappeared to obtain access to those and, if so, of the conditions under which this could happen and through which authorities?
 - v. The Mission's submissions of 30 July 2019 indicate that the hand-over note addressed to the (then) Chief Prosecutor of the SPRK contained an invitation to liaise with the EULEX WCIU regarding the actions undertaken in connection to the request to conduct an investigation of July 2009. What 'actions' does the note pertain to? Has the Mission conducted investigative actions in relations to this case and, if so, which actions?
 - vi. Have local authorities responded to the Mission's invitation contained in the hand-over note pertaining to this case? If so, have they sought the Mission's assistance?
 - vii. 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?

ASKS THE PARTIES to make any submission on the merit of this case no later than 16 March 2020 or, if more time is needed, make a timely request to have more time by that date.

For the Panel,

Guénaël METTRAUX
Presiding Member

Anna BEDNAREK
Member

Anna AUTIO
Member