



**DECISION ON THE IMPLEMENTATION OF
THE PANEL'S RECOMMENDATIONS**

Date of adoption: 11 December 2020

Case no. 2016-28

S.H.

Against

EULEX

The Human Rights Review Panel, sitting on 11 December 2020 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Ms Anna BEDNAREK, Member
Ms Anna AUTIO, 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 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. The complaint in this case was registered with the Panel on 22 September 2016.
2. By letter of 23 September 2016, the Panel informed the Mission that this case had been registered.

3. On 28 June 2017, 9 September 2017 and 17 October 2017, the Panel requested the complainant to provide additional information regarding the complaint.
4. On 20 October 2017, the Panel received a response from the Representative of the complainant, providing additional information.
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. The observations of the HoM were received on 16 October 2018 after which they were communicated to the complainant for additional observations.
6. On 28 March 2019, the Panel declared the case to be admissible (<http://hrrp.eu/docs/decisions/2019-03-28%20Admissibility%20Decision%202016-28-signed.pdf>) in relation to Articles 2, 3, 8 and 13 of the European Convention of Human Rights (hereafter, the Convention).
7. On 11 September 2019, the Panel rendered its decision on the merit of this case and found that the Mission had violated the fundamental rights of the complainant as were protected under Article 2 (procedural limb) and Article 3 of the European Convention of Human Rights (<https://hrrp.eu/docs/decisions/2019-09-11%20Decision%20and%20Findings%202016-28%20signed.pdf>). In that Decision, the Panel made the following recommendations to the Head of Mission:
 - i. Considering the gravity of the violations under consideration, the Panel invites the Head of Mission to carefully consider the possibility and the need for the Mission to acknowledge the violation of the complainant and his father's rights committed by the Mission;
 - ii. The Panel also invites the Head of Mission to consider the possibility of expressing the willingness of the Mission to continue to pursue its efforts to see justice being done in this case;
 - iii. If this has not already been done, the Panel invites the Mission to ensure that the case-file pertaining to this case is sent to the competent local authorities;
 - iv. The Panel recommends that, as it did in 2017-02, the Mission should consider making recommendations to the authorities regarding possible future investigative courses that could help resolve this case; in that context, the Panel recommends that the Mission should emphasise the importance of the victims' rights to the truth and to be informed of the general course of the investigation;
 - v. The Mission should take active steps to inquire with the authorities what steps, if any, are being taken to investigate this case and to report to the competent authorities of the European Union in Brussels if it becomes apparent that the authorities are not fulfilling their obligations in that regard;
 - vi. The Panel recommends that the present decision should be provided to the competent investigative authorities in Kosovo;
 - vii. The Panel also recommends that the Head of Mission should ensure that the monitoring activities of the Mission are conducted in a manner consistent with the Mission's human rights obligations and that it ensures that this part of its mandate contributes to the effective protection and promotion of those rights;

8. The Panel asked the Head of Mission to respond to the above no later than 11 November 2019. The Mission's response was eventually received a year later on 21 November 2020.
9. On 12 December 2019, the Panel amended Rule 43 of its Rules of Procedure to formally authorise the Mission (and not just a complainant) to seek a revision of its findings.
10. On 20 January 2020, the Mission through the Acting Head of Mission wrote to the Panel seeking the revision of the Panel's findings based on a newly discovered document.
11. By a decision of 4 June 2020, the Panel rejected the Mission's request for revision (<https://hrrp.eu/docs/decisions/2020-06-04%20Decision%20on%20Request%20for%20Revision%202016-28%20signed.pdf>). In that Decision, the Panel renewed its request that the Mission should carefully consider the Panel's Recommendations of 11 September 2019 and further invited the Mission to inform the Panel of the steps taken to implement those recommendations no later than two months from the receipt of that Decision.
12. The Mission's submissions on that point were received on 30 October 2020.

II. THE MISSION'S ACTIONS IN RESPONSE TO THE PANEL'S RECOMMENDATIONS

13. The Panel's first recommendation was:

'Considering the gravity of the violations under consideration, the Panel invites the Head of Mission to carefully consider the possibility and the need for the Mission to acknowledge the violation of the complainant and his father's rights committed by the Mission;'

14. To the Panel's regret, the Head of Mission declined to adopt the Panel's Recommendation. In its place, the Head of Mission expressed regret for the Mission's failure to investigate this case and expressed 'my deepest sympathy to the complainant and his family members'. Such a response does not constitute a sufficient or adequate remedy for the grave violation of the complainant's rights by the Mission. There is no indication that the Mission sought to reach out to the complainant.
15. Concerning the Panel's second recommendation ('The Panel also invites the Head of Mission to consider the possibility of expressing the willingness of the Mission to continue to pursue its efforts to see justice being done in this case'), the Head of Mission underlined the fact that local authorities were now solely responsible to investigate this case and said that the Mission 'cannot advise Kosovo institutions on individual cases, nor can it recommend to start or re-start an investigation'. The Head of Mission offered, furthermore, to monitor the investigation 'should the competent authorities re-open one in the present case'. The Head of Mission added the following:

As pointed out previously in relation to other similar cases, in line with its mandate and based on its systemic and thematic monitoring findings, EULEX can support

the competent authorities by providing recommendations addressing structural issues and can perform additional tasks upon request. During the course of last year, for example, EULEX Kosovo has been helping the Kosovo Police War Crimes Unit to set up a database enabling a modern case-management system and improving the police capacities in the fields of case-building, case administration and analysis of war-crimes cases. The Mission conducted a series of training courses for the Kosovo Police War Crimes Investigation Unit in close cooperation with the Kosovo Police [...] and is committed to continue providing any assistance possible within its means and capabilities.

16. The Panel notes that while the Mission is of course constrained by the nature and scope of its current mandate (and associated resources), the interpretation currently given to that Mandate by the Mission does little to contribute to cases of missing persons – once under its responsibility – being investigated. Waiting for local authorities to open investigations into such cases, if it were to happen, is not sufficient to ensure that the rights of those concerned, which continue to be violated, are effectively protected.
17. Considering the Mission failed for a decade in its responsibility to protect the rights of the complainant in this case, it owes the complainant more than the expression of sympathies via submissions to the Panel. The Panel is concerned that the narrow interpretation of the Mission's monitoring responsibilities could render the Mission effectively irrelevant in relation to the resolution of cases that were once its responsibility.
18. The Panel, therefore, invites the Head of Mission, once again, to consider what decision(s) and measures could be taken to see to it that the Mission is able to make an effective and positive contribution to the investigation (including the commencement of investigations) of those cases.
19. The Panel also recommends, if this had not already been done, that the Mission should ensure that the case-file pertaining to this case is sent to the competent local authorities. The Head of Mission confirmed that this had been done in December 2018.
20. The Panel's fourth recommendation was:

The Panel recommends that, as it did in 2017-02, the Mission should consider making recommendations to the authorities regarding possible future investigative courses that could help resolve this case; in that context, the Panel recommends that the Mission should emphasise the importance of the victims' rights to the truth and to be informed of the general course of the investigation;

21. The Head of Mission's response in relation to this recommendation is effectively to say that the Mission can do little (or nothing) unless and until local authorities take on their responsibility to investigate a case. This puts the Mission in a position of having to observe the continued violation of the rights of those concerned (including this complainant) while unable to do anything about it. Such a situation is entirely unsatisfactory from the human rights point of view. It also plainly raises the question of the compatibility of the Mission's current mandate with the Mission's continued obligation to act in accordance with basic human rights standards.

22. The Panel's fifth recommendation was to the following effect:

The Mission should take active steps to inquire with the authorities what steps, if any, are being taken to investigate this case and to report to the competent authorities of the European Union in Brussels if it becomes apparent that the authorities are not fulfilling their obligations in that regard;

23. As noted above, the Head of Mission effectively pointed to the Mission's current – reduced – mandate to suggest that it could not take such action unless local authorities requested it.

24. The Panel also recommended that its decision should be provided to the competent investigative authorities in Kosovo. The Head of Mission indicated that the Decision and Findings of the Panel as well as its Decision on Request for Revision had been circulated to all relevant units of the Mission. In addition, the former Decision was also communicated to the local authorities competent to investigate the case.

25. Lastly, the Panel recommended this:

The Panel also recommends that the Head of Mission should ensure that the monitoring activities of the Mission are conducted in a manner consistent with the Mission's human rights obligations and that it ensures that this part of its mandate contributes to the effective protection and promotion of those rights;

26. The Head of Mission did not directly address this recommendation. The Panel therefore would like to bring to the attention of the Head of Mission the Mission's human rights obligations as regards its past and current activities, and invites the Head of Mission, once again, to ensure that the Mission's current mandate is not interpreted in an unnecessarily narrow way that deprives the Mission of its ability to contribute to the strengthening of the rule of law in Kosovo, in particular in regards to human rights. The Panel also recommends that its concerns, as outlined above, regarding the interpretation currently given to the Mission's monitoring responsibilities be duly taken into consideration when carrying out such an evaluation.

27. The Panel also asked the Head of Mission, when reporting to the Panel, to clarify what executive competences the Mission still enjoys under the current mandate. In that regard, the Head of Mission mentioned that 'under its current mandate the Mission retains an executive capacity to support the Kosovo Institute of Forensic Medicine'. There is no further indication of the Mission having 'executive competence'. It is not clear to the Panel whether that is the only 'executive' function of the Mission under its current mandate or one aspect of it.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

FINDS that the Head of Mission has adopted some but not all of the Panel's recommendations in this case;

FINDS FURTHER that the Mission has thus far failed to provide adequate remedy for the violation of the complainant's rights in this case;

REITERATES that the violation of the rights of the complainant by the Mission was extremely serious and will carry grave consequences for the complainant;

EXPRESSES SERIOUS CONCERN that the Mission's current mandate, at least as presently interpreted by the Mission, is not capable of ensuring that the Mission can act in accordance with its human rights obligations and/or contribute effectively to ensuring the effective protection of those whose rights it was obligated to protect in an earlier iteration of its mandate and where the human rights obligations continue with respect to past acts or omissions; and

INVITES the Head of Mission, once again, to ensure that the Mission's mandate is not interpreted in an unnecessarily narrow way that deprives the Mission of its ability to contribute to the strengthening of the rule of law in Kosovo, in particular in regards to human rights;

KEEPS THE MATTER OPEN and **ASKS** the Head of Mission to consider what step(s) the Mission could take at this stage and in light of its current mandate to provide an effective remedy for the violation of the complainant's rights; and

ASKS THE HEAD OF MISSION to report as soon as practical on that last matter and no later than 28 February 2021.

For the Panel,

Guénaël METTRAUX
Presiding Member

Anna BEDNAREK
Member

Anna AUTIO
Member