



DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 19 October 2016

Case no. 2014-32

L.O.

Against

EULEX

The Human Rights Review Panel, sitting on 19 October 2016,
with the following members present:

Mr Guénaél METTRAUX, Member
Ms Elka ERMENKOVA, Member

The Presiding Member of the Panel, Ms Magda Mierzewska, participated in the deliberations of this case by way of electronic communications in accordance with Article 13(3) of the Rules of Procedure of the Panel

Assisted by
Mr John RYAN, Senior 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. COMPOSITION OF THE PANEL

1. Upon the resignation of Ms Katja Dominic from the Panel, Ms Elka Ermenkova, Substitute Member of the Panel replaced her in accordance with Rules 11(2) and 14(2) of the Rules of Procedure of the Panel.

II. DECISION OF THE PANEL OF 11 NOVEMBER 2015

2. On 11 November 2015, the Panel rendered its decision in relation to the complaint filed by L.O. against EULEX and made a number of recommendations to the Head of Mission (HoM) in accordance with Rule 34 of the Rules of Procedure. The decision read as follows:

" The Panel, unanimously

DECLARES THE COMPLAINTS WITH REGARD TO ARTICLES 2 AND 3 (PROCEDURAL LIMBS) AND ARTICLES 8 AND 13 OF THE CONVENTION ADMISSIBLE,

FINDS A VIOLATION OF THOSE RIGHTS, and

DECLARES that in the light of its above findings of fact and law the Panel finds it appropriate to make recommendations to the H[ead] o[f] M[ission], and

RECOMMENDS THE FOLLOWING REMEDIAL ACTION

- 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 alleged victims of rights violation (or their close relatives) 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. If necessary, the HoM should consider adopting guidelines laying down in more details what this general instruction might imply in concrete circumstances.
- c. The HoM should ensure that all investigative bodies within the Mission (the SITF and the EULEX Prosecutors) have at their disposal the necessary resources and support to accomplish their mission effectively and in a manner consistent with the effective protection of human rights of all those involved. For that purpose, and if considered necessary, the HoM should request additional resources for these organs so that they may perform their functions promptly, diligently and effectively in all cases.
- d. The HoM should seek to clarify the relationship between the Mission and the SITF with a view to ensure the effective protection of rights and guarantee that whichever entity is in charge of the matter provides adequate and sufficient information to the complainant. If necessary,

authorisation should be sought from the EU to make public the legal basis regulating the work of the SITF. This would also greatly contribute to bringing increased transparency and accountability to this mechanism.

- e. The HoM should impress upon the SITF and the States supporting its activities the importance of such cases being fully and effectively investigated and that wherever suspects are identified that they are being brought to justice promptly and fairly.
 - f. The HoM should impress upon the competent officials of the SITF the importance and necessity to inform victims of the general aspects of their investigation so as to make them aware of their efforts and commitment to obtaining justice on their behalf.”
3. The present Decision constitutes a follow-up to the Panel’s decision of 11 November 2015 and to the recommendations made therein.
 4. 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 *Desanka nad Goran Stanisić against EULEX*, 2012-22, 29 February 2016, § 3; *X and 115 other complainants against EULEX*, 2011-20, 11 November 2015, § 3).

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

5. On 9 February 2016, the Head of Mission acknowledged receipt of the Panel’s Decision and recommendations.
6. On 15 April 2016, the Panel sent a letter to the Head of Mission in which it noted that it had not received his comments on its recommendations and invited him again to submit same by 6 May 2016.
7. In reply, by letter of 29 April 2016, the outgoing Head of Mission, Gabriele Meucci, stated the following in response to the Panel’s recommendations.

“Since the Panel’s recommendations concern measures that are at the disposal of the CPCC [Civilian Planning and Conduct Capability], several EU institutions as well as Member States, I have informed the CPCC and the Contributing States of the Panel’ decision and findings, through the Civilian Operations Commander, and I consider the recommendation thus implemented.”

III. EVALUATION BY THE PANEL

8. The Panel wishes to observe that, contrary to what the above statement of the Head of Mission appears to suggest, the responsibility to enforce and implement the recommendations of the Panel falls entirely and exclusively to the HoM, not the CPCC nor to Member States. In that sense, whilst the Head of Mission might decide, in a particular case, to seek the assistance of others to implement the recommendations of the Panel, the responsibility for their implementation ultimately remains with the Head of Mission.
9. Secondly, whilst the outgoing HoM indicates in his letter that he has informed the CPCC and the contributing States of the decision and recommendations of the Panel, he says nothing of his efforts, if any, to implement the recommendations of the Panel. In particular, the HoM has failed to say anything about the need for him to acknowledge the violation of the rights of the complainants as recommended by the Panel (Recommendation (a); see para. 2 above). Nor has he placed before the Panel any evidence of his having implemented any of the other recommendations of the Panel (Recommendations (b)-(f)). In these circumstances, the Panel cannot consider the response of the Head of Mission the adequate.
10. Finally, and contrary to the apparent assumption of the HoM the responsibility to decide whether the recommendations of the Panel have been implemented or not rests with the Panel. The Panel must note in this context that whilst its recommendations are not legally binding, it is essential to the credibility and legitimacy of EULEX, as 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 those standards. In each case, the recommendations of the Panel are intended to ensure that this is the case, in the context and with due regard being given to the circumstances of each individual case, so that the adoption of those recommendations by the HoM would in all cases make a positive contribution to the effective protection of human rights by the Mission.
11. Based on the above considerations, the Panel is not satisfied that the HoM has thus far adequately and effectively addressed the recommendations of the Panel.

THE PANEL THEREFORE UNANIMOUSLY

Declares that the Head of Mission has not implemented the Panel's recommendations.

Invites the new Head of Mission to fully consider and implement each and all of the Panel's recommendations and to inform the Panel of the actions taken in response as soon as practical.

Decides that it remains seized of the matter.

For the Panel,


John RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member