



Human Rights Review Panel

## Newsletter No 18 – 01 November 2017 to 30 June 2018

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### Recent sessions of the Human Rights Review Panel

#### 36th Session of the Human Rights Review Panel, held from 4 to 6 December 2017

The Human Rights Review Panel (Panel) held its 36th session from 4 to 6 December, 2017 at which it, *inter alia*, reviewed twenty one (21) cases.

Case no: [2011-27 F and Others against EULEX](#) was lodged on 14 November 2011 by the family of X.F., who had been a prosecution witness in a major criminal case. After a number of attempts on his life by persons unknown, X.F., F. and their children were admitted into the EULEX Witness Security Program (WSP). They found that their conditions were very difficult in the WSP and left the program voluntarily. However, since X. F. still wished to testify in the case, he was transported to an EU Member State. X.F. returned to Kosovo to give statements at the pre-trial hearing in the case. He was subsequently re-admitted to the WSP. Shortly afterwards he returned to the EU Member State where he died on 28 September 2011. An investigation carried out by the EU member state police force established that he had died by suicide. The complainants submitted that the psychological pressure that X.F. suffered, his treatment by EULEX as well as his isolation from his family led him to commit suicide. They alleged that EULEX was aware of the fragile mental state of X.F. but failed to take the necessary steps to prevent his death.

The Panel concluded that the actions or culpable inactions of EULEX were highly relevant to the overall state of the well-being of X.F. and his family. It was not persuaded that EULEX gave sufficient

consideration to their safety and security. The Panel therefore held that there had been a violation of the procedural limb of Article 2 of the European Convention of Human Rights (ECHR) as well as a violation of Article 3 of the ECHR insofar as it prohibited inhuman or degrading treatment. The Panel recommended that the Head of Mission make a declaration to acknowledge that the circumstances of the case amounted to a breach of the rights of the complainants that were attributable to the acts and omissions of EULEX in the performance of its executive mandate and that she should disseminate the decision to the concerned EULEX staff so that they be provided with the necessary guidance on the applicable human rights standards in such matters.

The Panel published a redacted version of its decision in Case no: [2011-27 F and Others against EULEX](#) pursuant to a request from the Head of Mission to do so in accordance with the powers conferred on her by the relevant provisions of Annex 12/D 11 of the OPLAN, (Annex 10/D11 under the new OPLAN).

The Panel also communicated statements of facts and questions to the Head of Mission in relation to twenty (20) cases of murdered and missing persons (Case nos. 2016-09 to 2016-23 and Case nos. 2016-28 to 2016-32).



Left to right: Magda Mierzevska, John J Ryan, Guenael Mettraux and Anna Bednarek during deliberations at the 36<sup>th</sup> session of the Panel

### **37<sup>th</sup> Session of the Human Rights Review Panel, held from 10 to 12 April 2018**

The Human Rights Review Panel held its 37<sup>th</sup> session from 10 to 12 April 2018. It issued three inadmissibility decisions and communicated one case to the EULEX Head of Mission for observations.

Two cases concerned proceedings before Kosovo courts ([R.I. against EULEX, no. 2016-34](#) and [Ndërmarrja Hoteliere Turistike Iliria Deçan against EULEX, no. 2016-35](#)). As in many similar previous cases, the Panel declared that it had no jurisdiction to review judicial proceedings before the courts of Kosovo, even if EULEX judges sit on the bench.

The third complaint ([A.Z. against EULEX, no. 2017-01](#)) concerned the EULEX Prosecutors' decision not to investigate the complainant's case. The Panel found that the criminal case clearly did not fall under the authority of EULEX Prosecutors under the Law on Jurisdiction. It therefore declared the complaint manifestly ill-founded. Furthermore, the Panel found that the conduct complained of fell outside of the six-month timeframe for the lodgment of the complaint.

The Panel examined a case relating to the fate of a person who had allegedly been missing since 1998. The complaint was lodged by his family member. The Panel communicated the case to the EULEX Head of Mission, asking for her observations on its admissibility and merits.

During the session, the Panel also visited the EULEX Institute of Forensic Medicine where the Deputy Head, EULEX Department for Forensic Medicine provided a presentation on the work of the Institute.

### **38<sup>th</sup> Session of the Human Rights Review Panel, held on 24 to 26 May 2018**

The Human Rights Review Panel, (the Panel) held its 38<sup>th</sup> session from 24 May to 26 May 2018 during which it, *inter alia*, issued three inadmissibility decisions.

The first case of [Hysni Gashi against EULEX, Case no. 2017-05](#) related to the shooting to death of two persons and the attempted killing of several other persons on the terrace of a café in Shtime/Stimlje municipality on 22 April 2006. The Panel had previously considered part of this complaint in [Case no. 2011-22](#) in which it rendered an inadmissibility decision as pleaded by the complainant under Article 6, Law of the European Convention on Human Rights. The Panel found that the complainant had failed to establish any reason for the reconsideration of its earlier decision in accordance with Rule 43 (3) of its Rules of Procedure, (ROP) in that the Panel may refuse a request for a revision of its findings if no reason exists to warrant their reconsideration. The Panel also found the remainder of the complaint to be manifestly ill-founded within the meaning of Article 29 (1) (e) of the ROP and that it also failed to comply with Article 25 (3) of the ROP with regard to compliance with the time limit set down for the filing of such complaints.

The facts of the second case, [Feriz Gashi against EULEX, Case no. 2017-06](#) were similar to the facts outlined above in the case of Hysni Gashi against EULEX, Case no. 2017-05. The Panel found that the first part of the complaint was substantially the same as the matter which it had already examined, within the meaning of Rule 29 (1) (a) of its ROP and the complainant had failed to establish any reason for the reconsideration of the decision in accordance with Rule 43(3), as outlined above. The Panel found that the remainder of the complaint was manifestly ill-founded within the meaning of Article 29 (1) (e) of its ROP, and that the complaint had failed to comply with Article 25(3) of the ROP with regard to the time-limit for filing complaints.

The third case, [C.X against EULEX, Case no. 2017-07](#), related to the participation of the complainant and others in an organized crime group in conjunction with the smuggling of migrants. The Panel

found that it lacked competence to examine the complaint, as it fell outside its jurisdiction within the meaning of Article 29 (d) of its ROP and that it failed to comply with Article 25(3) of the ROP in relation to the time-limit for the filing of a complaint.



Left to right: John J Ryan, Joanna Marszalik, Guenael Mettraux and Anna Bednarek during deliberations at the 38<sup>th</sup> session of the Panel

### **Visit of EULEX interns to Human Rights Review Panel.**

Twelve (12) new EULEX interns visited the HRRP Building on 6 March 2018. The interns were provided with a detailed presentation on the mandate, procedures and operations of the Panel. The presentation was followed by a lively question and answer session and discussion.



The new EULEX intern group with from left to right: John J Ryan, Kushtrim Xhaferi and Valentina Vitali

### **Resignation of Members of the Human Rights Review Panel**

Ms Anna Bednarek, EULEX Member of the Human Rights Review Panel (Panel) resigned from her membership of the Panel on 14 June 2018. Ms Bednarek also held her primary position as an International Appeals Judge on the Kosovo Property Agency Appeals Panel. Ms Bednarek served extensively as a substitute member as a substantive member the EULEX Human Rights Review Panel. Her resignation from the Panel came about as a result of the staff reconfiguration of EULEX together with the termination of the executive mandate of EULEX on 14 June 2018.

Similarly, Mr Jorge Ribero resigned from his membership of the Panel as the substitute EULEX Member on 14 June, 2018 after a short assignment with the Panel. Mr Ribero concurrently held the primary position as a Criminal Judge at the Kosovo Supreme Court/Appellate Court. His resignation from the Panel was also necessitated by the reconfiguration of EULEX and the termination of the executive mandate of EULEX on 14 June 2018.

### **Resignation of Legal Officer, Ms Joanna Marszalik**

Ms Joanna Marszalik, Legal Officer with the Panel resigned on 30 June, 2018. She served as a Legal Officer with the Panel from April 2012 until 15 October 2016 and again from 29 January 2018 until 15 June 2018.

### **Impact of EULEX staff reconfiguration on the Human Rights Review Panel Secretariat**

The legal officer strength of the Secretariat of the Human Rights Review Panel was reduced from two (2) legal officers to one (1) legal officer in the recent staff reconfiguration of EULEX. Coming on the heels of the previous staff reduction of the legal officer strength from three (3) legal officers to two (2) legal officers in the last EULEX staff reconfiguration in 2016, this constitutes an approximate 66% reduction in the legal officer staff in the Secretariat over the last two (2) years. The adverse impact of this legal officer strength reduction on the operations of the Panel is rather unfortunate, not least, in view of the fact that the workload of the Panel has remained constant over time with some twenty five (25) cases currently pending before the Panel.

Even though the role of the Panel is linked to the duration of the executive mandate of EULEX Kosovo, the Panel may act for a limited supplementary period after the completion of the executive mandate of EULEX Kosovo as necessary for the review of existing current complaints or complaints that may be filed within the six (6) month time limit from the expiry of the EULEX executive mandate, i.e. 14 December 2018. The Panel will also complete its Panel end of mission report within the said supplementary period.

### **Publication of the Human Rights Review Panel Annual Report 2017**

The Annual Report of the Human Rights Review Panel for the period 1 January 2017 to 31 December 2017 was published on 1 June 2018. The Report may be accessed at: <http://www.hrrp.eu/annual-report.php>.

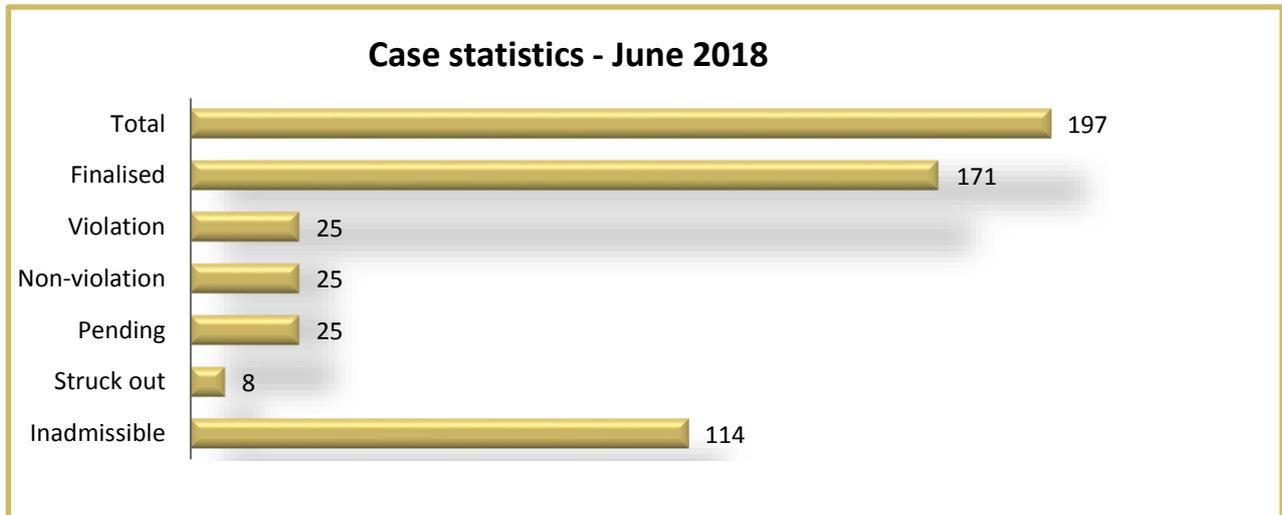
### **Caseload**

There are currently twenty five (25) complaints pending before the Panel.

### **Case statistics**

The Panel has reviewed one hundred and seventy one (171) cases since it commenced its operation in June 2010. It held that EULEX Kosovo committed rights violations in twenty five (25) cases. It has additionally found that there were no human rights violations in twenty five (25) other cases which it

had deemed admissible. Two (2) complaints have been filed with the Panel since 1 January 2018 and there are currently twenty five (25) cases pending before the Panel.



#### Publication of decisions

The decisions of the Panel are published on the website of the Panel in the English, Albanian and Serbian languages and may be accessed at: [www.hrrp.eu](http://www.hrrp.eu).

#### Next session of the Human Rights Review Panel

The dates for the next session of the Panel have yet to be decided.

Visit Panel website: [www.hrrp.eu](http://www.hrrp.eu)



## HOW TO FILE A COMPLAINT WITH HRRP

(Rules 25 and 26 of the Rules of Procedure of the HRRP)

### Who?

Any person who does not work for EULEX Kosovo and who claims to be a victim of a human rights violation by EULEX Kosovo in the performance of its executive mandate.

The complainant (the person making the complaint) can be represented by a lawyer or another representative of his or her choice. In that case a letter of authority must be filled in.

### What?

The Panel will only examine complaints concerning alleged human rights violations that happened after 9 December 2008 in Kosovo. The violation must be caused by EULEX Kosovo in the performance of its executive mandate.

The Panel will not review judicial proceedings before the courts in Kosovo.

### When?

The complaint must be submitted to the Panel within six months from the date of the alleged violation.

### How?

The complaint must be submitted in writing. No complaints may be made by phone. The complainant can use either the English, Albanian or Serbian language.

The complaint should normally be made on the complaint form and be accompanied by relevant documents and decisions (if any), as instructed in the form.

If a complaint is introduced in a letter, such letter must set out, at least in summary form, the subject matter of the complaint in order for the matter to be examined further.

### Where?

The complaint may be filed at:



#### Human Rights Review Panel - Secretariat

Rrustem Statovci Street no. 29 – 10000 Pristina – Kosovo

Tel: +383 (0) 38 28 2207

A complaint can also be sent by email to [office@hrrp.eu](mailto:office@hrrp.eu)

[www.hrrp.eu](http://www.hrrp.eu)

If the complaint is e-mailed, the signed original complaint must be delivered within four weeks from the date of the original e-mail.

### Completion of the Complaint Form

The complaint should be written legibly and, preferably, typed.

The form should contain all contact details of the complainant.

If the complainant provides documentary evidence, legible copies should be submitted. **Do not send original documents.**

The documents should be listed in date-order, numbered consecutively and with a short description (e.g. letter, order, judgment, appeal, etc.).

The complaint will be assigned a file number upon registration. The file number must be referenced in all subsequent correspondence. If the complainant has an earlier complaint pending before the Panel, he or she must inform the Panel of the file number. If the complainant for some reason does not wish his or her identity to be disclosed, he or she should fill in the appropriate section of the complaint for.