DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 07 March 2017

Case No. 2014-11, 2014-12, 2014-13, 2014-14, 2014-15, 2014-16 and 2014-17

D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., and I.R.

Against

EULEX

The Human Rights Review Panel, sitting on 07 March 2017
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Elka ERMENKOVA, Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Noora AARNIO, 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. DECISION OF THE PANEL OF 19 OCTOBER 2016

1. By a Decision of 19 October 2016, the Panel determined that the rights of the complainants had been violated by the Mission and recommended that the Head of Mission ("HoM") should adopt the following measures to address these violations:

"FOR THESE REASONS, THE PANEL, BY UNANIMOUSLY,

1. *Holds* that there has been a violation of Articles 2 and 3 and of Article 13 in conjunction with Article 2 of the Convention.
2. *Finds* it appropriate, in the light of its above findings of fact and law, to make the following recommendations to the Head of Mission under Rule 34 of its Rules of Procedure:

"*Finds* it appropriate, in the light of its above findings of fact and law, to make the following recommendations to the Head of Mission under Rule 34 of its Rules of Procedure:

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 communicate and transmit the present decision to all relevant investigative and prosecutorial organs of the Mission.

c. At the time of doing so, the HoM should instruct all organs of the Mission who are in contact with close relatives of persons reported to have been killed during the conflict or in the post-conflict circumstances 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 interlocutors. If necessary, the HoM should consider adopting guidelines laying down in more details what this general instruction might imply in concrete circumstances.

d. The HoM should also impress upon the EULEX investigative bodies the importance of cases of disappearance remaining an investigative priority so that they are fully and effectively investigated and that wherever suspects are identified that they are brought to justice promptly and fairly.

e. The HoM is further invited to draw to the attention of the competent investigative and prosecutorial authorities within the mission the factors listed in the present decision as being relevant to evaluating the "exceptional" competence of EULEX prosecutors under Article 7(A) of the revised Law on Jurisdiction and to impress upon them the importance of taking these into account in their assessment of whether they should seek to take over responsibility over this case. The Panel expects that a review of the present cases will

be conducted in light of these parameters with a view to ensure that the investigative and prosecutorial authorities take an informed and legally sound decision as regards the need to investigate some or all of these cases.

f. The Panel is fully aware of the challenges and difficulties resulting from the Mission's limited resources. However, within the confines of these resources and commensurate with the importance that the Mission attaches to the effective protection of human rights, the Panel invites the HoM to ensure that investigative bodies within the Mission have at their disposal all the necessary resources and support to accomplish their mission effectively and in a manner consistent with the effective protection of human rights, in particular those guaranteed by Articles 2 and 3 of the Convention."

2. 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 *W against EULEX*, 2011-07, 26 August 2014; *Becić against EULEX*, 2013-03, 11 November 2015).

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

3. By letter of 29 November 2016, the HoM informed the Panel of the steps and measures taken to implement the Panel's recommendations.

III. EVALUATION BY THE PANEL

4. Regarding the Panel's first recommendation (see, above, para. 1(a)), the Panel notes with regret that it has been the consistent practice of the Mission to refuse or fail to formally acknowledge responsibility for a violation of the complainant's human rights where the Panel has determined that this had occurred. Such an acknowledgment would provide an important form of just satisfaction in a case like the present one to remedy the wrong done to the complainant by the Mission. This form of relief is all the more important in the present context since the Panel is not permitted to recommend any sort of monetary reparation to compensate for the prejudice caused to the complainant.

5. As regard the recommendation that the HoM should communicate and transmit the present decision to all relevant investigative and

prosecutorial organs of the Mission (see para. 1(b)-(c) and (e) above), the HoM said the following:

"...I intend to communicate the decision to all relevant investigative and prosecutorial organs of the Mission, in particular EULEX Prosecutors, who remain ultimately responsible for assessing whether extraordinary circumstances that would justify taking over a particular case exist."

6. The Panel is satisfied that this fully implements the Panel's recommendation on that point. In particular, communication of the Panel's Decision to EULEX Prosecutors would help ensure that, when interpreting the notion of "extraordinary circumstances" they take due consideration of the factors identified by the Panel as relevant from the point of view of human rights law to that inquiry. It will also be apparent to EULEX Prosecutors from the Panel's decision what importance human rights law attaches to the way in which victims of rights' violations are to be treated.

7. The HoM also stated the following:

"...[I]n order to ensure increased compliance with human rights standards by the Divisions, I have approved the establishment of a Human Rights Focal Point Network within the Mission. The Network will serve as a mechanism to mainstream human rights in the implementation of the Mission's mandate and will work to ensure a review of the procedures and guidelines currently in place. I undertake to inform you about the results of the internal review and consultations and the need for such guidelines.

Furthermore, I will forward, through the Civilian Operations Commander, the Panel's decision to the Member States, who are ultimately responsible for the resources allocated to the Mission and particular units within the Mission."

8. The Panel is encouraged by and commends the HoM for her decision to establish a Human Rights Focal Point Network to ensure human rights compliance by the Divisions. This arrangement should help coordinate efforts within the Mission to guarantee human rights in the context of the Mission's executive mandate and thus contribute to the effective protection of those rights.

9. The Panel had also recommended that the HoM should impress upon the EULEX investigative bodies the importance of cases of disappearance as investigative priorities (see para. 1(d) above). Whilst the HoM did not expressly address this recommendation, the Panel's decision was duly communicated to the EULEX prosecutors so that the Panel is satisfied that its concern was duly and properly passed on to the competent organs of the Mission.

10. Regarding the Mission's resources (see para. 1(f) above), the Panel welcomes the step taken by the HoM to forward the Panel's decision to Member States so that they can take into consideration the Mission's human rights obligations when allocating resources for that purpose.

THE PANEL THEREFORE UNANIMOUSLY

Declares that the HoM has implemented its recommendations in this case in part only,

Welcomes the HoM's indication that the HoM will advise the Panel of the result of the internal review currently being undertaken and looks forward to receiving that information,

Decides to close the examination of this case.

For the Panel,

Human Rights Review Panel HRRP Kosovo

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member