



## **DECISION ON ADMISSIBILITY**

**Date of adoption: 4 June 2020**

**Case no. 2016-23**

**Q.J.**

**Against**

**EULEX**

The Human Rights Review Panel, sitting on 4 June 2020 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 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 on 30 June 2016.
2. By letter of 1 July 2016, the Panel informed the Mission that this case had been registered with the Panel.
3. On 28 June 2017, the Panel requested this and other complainants to provide additional information regarding their complaints.
4. On 20 September and 17 October 2017, the Panel sent two further requests for additional information to the complainant.
5. On 20 October 2017, the Panel received a response from the Representative of the complainants providing additional information in relation to two cases, including the present one.

6. 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.
7. By letter of 17 January 2019, the Mission was requested again to provide answers to the questions by 16 February 2019.
8. By letter of 8 April 2019, the Mission was requested once more to provide answers to the questions as soon as practical.
9. The observations of the HoM were eventually received on 1 May 2020.
10. Due to the corona virus pandemic and the resulting suspension of postal services, the Mission's observations could not be served on the complainant. Because of the exceptional circumstances created by the current sanitary situation and having satisfied itself that the Panel could proceed without causing prejudice to the complainant, the Panel has decided to render its Decision without delay to ensure that proceedings are conducted expeditiously. The Mission's submissions will be served on the complainant together with the present Decision so that the complainant is in a position to comment on any of the Mission's submissions if she chooses to do so at the merit stage of these proceedings.

## **II. IDENTITY OF COMPLAINANT AND STANDING**

11. The complainant in this case requested not to have her identity disclosed to the public.
12. Having considered the matter, in particular the nature of the allegations being made, the Human Rights Review Panel ("the Panel") is satisfied that the request should be granted.
13. Considering the close family relationship between the primary victim and the complainant, 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.

## **III. FACTS**

14. On 18 June 1999, the complainant's husband was last seen in Gjakova/Djakovica.
15. At an unspecified date, the complainant reported the disappearance of her husband to the District Public Prosecution Office in Pejë/Peć and to the Ministry of the Interior of the Republic of Serbia.
16. On 24 June 1999, the ICRC opened a tracing request for the complainant's husband.

## **IV. COMPLAINT**

17. The complainant does not refer to any particular provision or to any particular fundamental rights. However, from the tenor of the complaint, it is apparent that it relates to an alleged violation of the following fundamental rights: Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) under its procedural head, which guarantees a person's fundamental right to life and provides for an obligation to investigate cases of suspicious deaths; Article 3 of the Convention which guarantees a person's right not to be subject to torture or inhuman or degrading treatment

or punishment. In addition, the complaint might be relevant to the rights provided in Articles 8 and 13 of the Convention, which guarantee an individual's right to private and family life as well the right to an effective remedy.

## **V. SUBMISSIONS OF THE PARTIES**

### **The complainant**

18. 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 fundamental rights.

### **Head of Mission ("HoM")**

19. The HoM's submissions were received on 1 May 2020. In those, the HoM submits that the Mission became aware of this case after the hand-over of cases and case-files from UNMIK in the period December 2008-March 2009. Based on the information it received, it became apparent that the case had been investigated by UNMIK and was eventually terminated by an UNMIK International Prosecutor in May 2008. Documents pertaining to this case were then transmitted to EULEX Kosovo during the hand-over phase. As part of the hand-over, the EULEX War Crimes Investigation Unit (WCIU) also received a 'missing person' file relating to the victim. The Mission also indicated that, according to its records, the complainant never informed the Mission of the disappearance of her husband.
20. Regarding the transfer of the records of this case by UNMIK, the Mission points out that the agreement between UNMIK and EULEX Kosovo regarding this matter did not foresee the transfer of files that had already been dismissed or terminated by UNMIK but only 'active' prosecution files. It adds:

'Therefore, dismissed or terminated case-files such as the present one, were not transferred to EULEX, but were archived at the Special Prosecution Office of the Republic of Kosovo – SPRK or at the District Prosecutors' Offices. The present case was terminated by the District Public Prosecutor's Office in Prizren and therefore the case-file should be located there.'
21. Overall, EULEX received 50 active prosecution case-files classified by UNMIK as 'war crimes', 1187 police case-files classified by UNMIK as 'war crimes' and around 5000 police files classified by UNMIK as 'missing person cases' among which was the case pertaining to the husband of the complainant, which was kept open 'waiting for new information'. The Mission did not receive a 'war crime' file pertaining to that case as it had already been terminated and archived by UNMIK.
22. The Mission also provided an extensive account of the large-scale process of recording, storing and categorization of case-files. As already noted, however, it did not receive the terminated prosecution case-file relating to the present matter. The Mission describes the categorisation of cases by UNMIK as sometimes inconsistent and incoherent. As a result, 'in order to address the challenges inherited from UNMIK', the Mission conducted several reviews and re-categorisation of case-files over the years. Progress, the Mission points out, 'was hampered by a variety of factors, such as the lack of a case management system (which would have enabled the WCIU to cluster victims, suspects, witnesses and crimes scenes), the high turn-over of staff, the reconfiguration of the WCIU in 2014 which resulted in the deletion of its intelligence and research capacity, as well as the fact that some of the case files handed over appeared to be missing documents, reports or photographs.'

Active cases and case-files were then sent for review. The present case was not, however, as 'it had already been terminated by a UNMIK Prosecutor'.

23. In 2010, the EULEX WCIU conducted a second comprehensive quantitative analysis of the war crimes cases pending before it at the time, 'in an attempt to produce statistical data and categorize cases based on the types of war crimes, the background of victims/witnesses/suspects, the location of the offences, and the time when they occurred':

'This effort was meant to serve as a basis to develop a more strategic investigative plan, taking into account the limited resources available and the very high number of requests to conduct investigations coming from the SPRK. The figures produced through this review presented several elements of distortion and although they did illustrate some trends, they could not be considered accurate from a scientific point of view. Regrettably, for example, statistics could not give an idea of the overall number of victims or perpetrators, since only victims and suspected perpetrators with known identities had been put on the record.'

A third quantitative review was conducted in March 2013 to further assess cases and identify the cause of discrepancies in the accounting of cases.

24. Asked by the Panel about its competence to investigate and prosecute cases of enforced disappearance, the Mission suggested that although, in its view, the legal basis underlying its mandate was somewhat ambiguous regarding this category of crimes, EULEX 'indirectly, investigated, prosecuted instances of enforced disappearances in the framework of war crimes cases'.
25. Regarding the present case, the Mission says that it did not investigate it because the case had been terminated by UNMIK.
26. The Mission does not address the Panel's question as to whether UNMIK or KFOR have been contacted about this (and other related) case(s). Instead, the Mission indicates that a review of UNMIK documents suggest that the father of the missing in this case was interviewed by UNMIK on 30 March 2000 and again on 8 May 2008 and the complainant was interviewed by phone on 21 March 2000. The Mission says that on the occasion of the 8 May 2008 interview the father of the disappeared 'appear to have been told that, due to the lack of clues, the investigation could not move forward'. Furthermore, at some point in time, the Office of Missing Persons and Forensics – OMPF (the predecessor of the Department of Forensic Medicine, which later became the Institute of Forensic Medicine – IFM) collected blood samples from the parents and children of the disappeared.
27. Asked if EULEX is aware of any of these cases being investigated by any other authority, the Mission answered:
- 'In this regard EULEX invites the complainant to contact the Kosovo institutions.'
28. There is no indication that relatives of the family were informed by the Mission regarding any information in possession of the Mission in respect to this case or the Mission having tried to contact them.
29. Asked whether, to the Mission's knowledge, this case is being investigated, the Mission responded further that, in accordance with Council Decision (CFSP) 2018/856 of 8 June 2018 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, the Mission no longer has a mandate to investigate, prosecute and adjudicate

cases. The Mission did not answer the Panel's question and, instead, 'encouraged [the complainant] to seek any information from the competent Kosovo institutions'.

30. Asked whether the Mission had violated the fundamental rights of the complainant, the Mission suggests that the complainant does not refer to any particular violation or violations of fundamental rights by EULEX. The Mission notes, furthermore, that the legal characterisation of the matter – pursuant to Article 2 and 3 of the Convention – was made by the Panel, not the complainant.
31. In regards to substance, the Mission submits that the complaint is inadmissible *ratione materiae*, *ratione personae* and *ratione temporis*. Regarding the Mission's competence *ratione materiae*, the Mission said this:

'As indicated above, the criminal case relating to the abduction of [the complainant's husband] was terminated by a UNMIK Prosecutor in May 2008, more than six months before the EULEX mandate began on 9 December 2008. Cases that had already been dismissed or terminated by UNMIK were not transferred to EULEX, but were archived in the SPRK or at the District Public Prosecutor's Office in Prizren and the respective case-file should currently be located there. While it is true that the Mission had as mandate to investigate this type of cases, the abduction of [the complainant's husband] had already been investigated by UNMIK with no results before the commencement of EULEX mandate; the Mission had no reasons to question the effectiveness of the UNMIK's investigation, and the complainant never approached EULEX to raise concerns about the UNMIK investigation or report new information. In light of all the above, EULEX considers the complaint to be inadmissible *ratione materiae*, because this case never came into the competence of EULEX.

32. Regarding the Mission's competence *ratione personae*, the Mission made the following submissions:

'Furthermore, the complaint is also inadmissible *ratione personae* because the alleged violations cannot in any way be attributable to EULEX. In case the complainant thought that her rights had been violated by UNMIK, she could have filed a complaint before the UNMIK-Human Rights Advisory Panel, which she did not do.'

33. Regarding the issue of its competence *ratione temporis*, the Mission said the following:

'Finally the complainant should also be declared inadmissible *ratione temporis* in accordance with Rule 25/2 since there is no genuine link between the disappearance of the complainant's husband and the beginning of the EULEX mandate.'

## VI. THE PANEL'S ASSESSMENT

*Mandate of the Panel (Rule 25 par. 1 of the Rules of Procedure) and inherent limitations placed on the Mission regarding the protection of human rights*

34. 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 for 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.

35. 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.
36. 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.
37. The Panel will consider the Mission's arguments regarding its competence *ratione materiae*, *personae* and *temporis* in that order after addressing the Mission's claim that the complaint does not contain any suggestion that the Mission is to be held responsible for the alleged violation of the complainant's rights.

*Does the complaint allege a violation of rights by the Mission?*

38. As a preliminary matter, the Mission suggests that the complainant does not allege or impute a violation against the Mission. Such an argument has already been raised and rejected in an earlier case. It must be rejected once again for the same reasons.
39. In its Decision on Admissibility in the case of *Milijana Avramović Against EULEX* (2016-17) of 11 December 2019 (<https://hrrp.eu/docs/decisions/2019-12-11%20Admissibility%20Decision%202016-17.pdf>), the Panel had said the following (paras 47 *et seq*):
  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 complainant 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.

40. These findings apply *mutatis mutandis* to the present case and answer the Mission's submissions. The Panel is therefore satisfied that the complaint complies with the requirements of form and substance required under the Rules and is satisfied that the complainant is in fact alleging that the Mission violated her rights.
41. The Mission also submitted that the Facts and Questions submitted to the Mission by the Panel were not legally sound as they suggested that the complainant had referred to the violation of particular rights whereas it was in fact the Panel that characterised the facts alleged under particular legal norms. The Mission appears to mis-apprehend the role of the Panel: what norms apply to a particular case is the responsibility of the Panel itself (*jura novit curia*) and the Panel is not bound by the way in which either party characterise the facts of the case from the legal point of view. The fact that the complaint form to the Panel includes a section in which the complainant may invoke specific human rights instruments or provisions does not alter the Panel's role and responsibility in the legal characterisation of the case.
42. Furthermore, the Panel would note that a great many complainants are not legally trained and come before the Panel un-represented so that the Panel must ensure that the basis upon which the Panel renders its decision accurately reflects the facts of the case even if a party or the other has not fully or properly articulated those.
43. The Panel also notes that the principle of *jura novit curia* is well-established in the European Court of Human Rights case law. See e.g. *Şerife Yiğit v. Turkey [GC]*, no. 3976/05, para 52, 2 November 2010, in which the Court stated:

"[S]ince the Court is master of the characterisation to be given in law to the facts of the case, it is not bound by the characterisation given by the applicant or the Government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties and even under a provision in respect of which the Court had declared the complaint to be inadmissible while declaring it admissible under a different one. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on [...]."

44. In this particular instance, it is clear that, from the nature of the factual allegations contained in the complaint – as was the case in a large number of prior similar complaints – the fundamental rights relevant to this complaint are those guaranteed, *inter alia*, in Articles 2, 3, 8 and 13 of the European Convention of Human Rights.

#### *The Mission's competence ratione materiae*

45. As mentioned above in paragraph 31, the Mission is taking the view that the complaint is inadmissible *ratione materiae* because the case had been investigated 'with no result' and was closed by UNMIK and never transmitted to EULEX. According to the Mission, the case therefore 'never came into the competence of EULEX'. The Panel cannot accept such reasoning.
46. As a preliminary matter, the Panel notes that this submission is inconsistent with many earlier cases in which the Mission conceded that it was competent, *ratione materiae*, to investigate and prosecute the very same sort of cases as is now the subject of these proceedings. The Mission's submission that it lacks competence in this case, therefore, appears to hang on the fact that this case had been 'closed' by UNMIK and was not

formally communicated to EULEX Kosovo. The Panel cannot accept the suggestion that these circumstances would mean that the Mission was not competent *ratione materiae* to investigate (and, as the case may be, to prosecute) this case for the following reasons.

47. First, as determined by the Panel in prior cases, the investigation and prosecution of cases of enforced disappearance fell squarely within the mandate *ratione materiae* of the Mission. See, e.g., *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; *Sadiku-Syla against EULEX*, 2014-34, Decision on Admissibility, 29 September 2015; *Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, Decision on Admissibility, 30 September 2015; *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015.
48. And, within that context, the Panel has also 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).
49. It has also determined that this sort of cases were not just within the competence of the Mission, but a priority issue. See, e.g., *L.O. against EULEX*, case No. 2014-32, Decision and Findings, 11 November 2015, para. 47.
50. Secondly, the fact that the case had been 'closed' by UNMIK had no material effect legally speaking on the mandate of the Mission or on its human rights obligations. This determination by UNMIK did not bind the Mission, nor did it qualify in any way the Mission's duty and responsibility to protect the rights of those coming within the scope of those affected by its executive mandate.
51. Thirdly, the Mission became aware of the existence of this case sometime between December 2008 and March 2009. It knew that UNMIK had not 'resolved' this case, that no one had been brought to justice for the disappearance of the complainant's husband, and that his remains had not been found. In other words, the Mission was aware that the case still remained to be solved.
52. Fourthly, as a 'closed' UNMIK case, the Mission was also aware that case-files existed that would have been available to (a) UNMIK, (b) the SPRK, and (c) the District Prosecutor. Each and all of these could have been contacted by the Mission with a view to seek to obtain a copy thereof. On the record currently available to the Panel, it would appear that the Mission failed to do so. The Panel will invite the Mission to address the question of the reasons why this was not done.
53. The Mission says that it had 'no reasons to question the effectiveness of the UNMIK's investigation'. This is both incorrect and irrelevant for the purpose of deciding the admissibility of this case. It is incorrect as the Mission has made clear in its submissions in this and other cases that it was plainly aware of some of the shortcomings in UNMIK's investigation of this sort of cases and organizing of its records. In particular, the Mission would have been aware that UNMIK resolved few if any of cases of enforced disappearance that occurred during the conflict or in its aftermath. Furthermore, the Mission had no reason to trust UNMIK's actions and to rely on its assessment in relation to that particular case since –
  - a) The Mission had not received the case-file of that case and could not therefore itself assess the reliability or otherwise of the work done by UNMIK in relations to that case;



- b) The Mission did not ask UNMIK (or others) for that case-file to carry out such an assessment;
- c) The Mission took no steps to contact UNMIK in relations to this case.

The Mission therefore had no insight into the measures and investigation of this case by UNMIK that would have allowed it to satisfy itself that a full and effective investigation of this case had already been conducted.

- 54. The Mission's submission is also irrelevant. The fulfillment of its obligations could not be delegated to others. This is the case, in particular, of its human rights obligations. In the exercise of its executive mandate, the Mission was therefore required and expected to ensure that the fundamental rights of all those concerned by it would not be negatively affected by its actions or decisions. That was not a responsibility that the Mission could assume UNMIK had born on its behalf.
- 55. Finally, the Mission suggests in its submissions that the complainant did not make herself known to the Mission. Such a submission was already made in earlier cases and has already been set aside by the Panel as not material. The Panel reiterates that the responsibility of the Mission to investigate and prosecute this sort of cases existed *ex officio*. It did not require relatives of a disappeared to expressly request the Mission to act. Furthermore, as the Mission made clear in its submissions, it knew and was aware of this case. It was upon the case coming to the attention of the Mission that the obligation for it to initiate an investigation arose (see, e.g., *Al.-Skeini and Others v UK*, 7 July 2011; 53 EHRR, para 165). This was enough to require of the Mission that it should look into it with a view to fulfil its executive responsibility and meet its human rights obligations towards the close relatives of the disappeared, including the complainant.

*The Mission's competence ratione personae*

- 56. Regarding the question of its competence *ratione personae*, the Mission submitted (see, above, paragraph 32) that:

'Furthermore, the complaint is also inadmissible *ratione personae* because the alleged violations cannot in any way be attributable to EULEX. In case the complainant thought that her rights had been violated by UNMIK, she could have filed a complaint before the UNMIK-Human Rights Advisory Panel, which she did not do.'

- 57. The tenor of the complaint suggests that the complainant alleges that the Mission failed to investigate this case and to keep her informed of the course of that investigation. To the extent that the complainant also refers to the acts and conduct of UNMIK, the Panel would have no competence over *that* part of the complaint.
- 58. Therefore, the complaint is admissible, *ratione personae*, to the extent only that it pertains to the alleged conduct – by act or omission – of the EULEX Mission.

*The Mission's competence ratione temporis*

- 59. According to the Mission, the complainant should be declared inadmissible *ratione temporis* in accordance with Rule 25, paragraph 2, 'since there is no genuine link between the disappearance of the complainant's husband and the beginning of the EULEX mandate.' similar arguments have been raised and dismissed in earlier cases. See, e.g., 2016-16, paras 46 *et seq.* The application of the principles and considerations outlined in those cases must similarly result in these submissions being rejected in the present case.

60. Firstly, the Panel notes that information pertaining to this case was forwarded to the Mission during the hand-over process so that it became aware of the existence of that case sometime between December 2008 and March 2009.
61. Secondly, as pointed out in other similar cases, the violations alleged in the present case are regarded normatively as ongoing or continuing violations. 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. 130-34; *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).
62. If the alleged violations were to be established, they would therefore have been occurring all through the Mission's existence until at least 14 June 2018. A link between the Mission's executive mandate and the facts underlying this case would, therefore, have been connected for a decade. That link is further reinforced by the fact that the Mission, as it concedes, knew of this case all through that time.
63. In those circumstances, the Panel is satisfied that a sufficient temporal link between the disappearance of the complainant's husband and the mandate of EULEX has been established.
64. Finally, 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). The Mission did not object to the admissibility of the complaint on those grounds. Considering the nature of the alleged violation and its ongoing nature, the Panel is satisfied that the complainant complied with this requirement in the present case.

#### *Miscellaneous considerations*

65. As mentioned above, the Mission has suggested in response to queries from the Panel that the complainant should address these to the local authorities.
66. The Panel wishes to make it clear that these proceedings are not intended to direct the complainant to any third party. Consistent with the Panel's Rules of Procedure, the proceedings are intended to verify the Mission's compliance with its own obligations as the human rights duty-bearer bound by international human rights law. To the extent that steps are to be taken in furtherance of that purpose, it is therefore the responsibility of the Mission to take steps towards the local authorities. As a matter of law, there is no such thing as *human rights self-help*. Human rights obligations are binding on states and upon those entities (such as EULEX Kosovo) which have either committed or which are bound to comply with those.
67. Where taken, such steps could be relevant to the Panel's assessment of the sufficiency and adequacy of the Mission's response in light of the fundamental rights under consideration. The Panel therefore invites the Mission to indicate as part of its submissions on the merit of this case what steps, if any, the Mission has taken to discuss and raise the present matter with local authorities.

68. The Panel notes in this context the public statements attributed to the Head of Mission in which he indicated that the Mission was and remains committed to contributing to the resolution of cases of enforced disappearance (see, e.g., EULEX Press Office, Press Release: 'We have more than 1640 reasons to continue our work to establish the fate of the missing,' says Head of the EU's Rule of Law Mission on the National Day of Missing Persons'; Associated Press, 'Kosovo families seek answers 21 years after Serb conflict', 14 May 2020: <https://apnews.com/d86d5397215c81f2f695f46d2c905977>). The Panel takes cautious hope in this statement and will invite the Mission to provide an indication of the strategy which the Mission intends to deploy in that regard to ensure that the human rights of those concerned – including the present complainant – are being effectively guaranteed in such a context.

**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;


**INVITES THE MISSION** to clarify the following in its submissions on the merit of this case:

- i. What steps, if any, have been taken by the Mission towards local authorities in relation to this case? In particular, has the Mission inquired with local authorities whether (a) they were aware of the existence of that case and (b) whether they are currently investigating it and, if not, (c) why.
- ii. What role, if any, does the Mission intend to play in the future in relation to this unresolved case of enforced disappearance? What concrete measure or action does the Mission consider within its (current) powers to seek to advance the investigation and resolution of this case? If the Mission does not intend to take any steps with respect to this case, why not?
- iii. Were the documents received from UNMIK in relation to this case transmitted to the local Kosovo Authorities following the Mission's change of mandate in June 2018 and reduction of executive competence?
- iv. Did the Mission try to contact UNMIK, the SPRK or the District Prosecution to obtain a copy of the case-file pertaining to this case? If so, what was the outcome of the contact? If not, why?


**INVITES THE COMPLAINANT** to respond to the following:

- i. Please describe the effect – financial, legal, personal and emotional – that the disappearance of your relative has had upon you and your family.


For the Panel:



Guénaél METTRAUX  
Presiding Member



Anna BEDNAREK  
Member



Anna AUTIO  
Member