DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 29 April 2021

Case no. 2016-10

Dragiša Kostić

Against

EULEX

The Human Rights Review Panel, sitting on 29 April 2021 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Mr Petko PETKOV, 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 on 30 June 2016.

2. On 28 June 2017, the Panel requested this and other complainants to provide additional information regarding their complaints. The complainant initially responded through the representative for Serb families of the Missing Persons Resource Center (MPRC), an NGO based in Pristina, that he had no further information in relation to this case.

3. On 20 September and 17 October 2017, the Panel sent two further requests for additional information via the representative of the MPRC.

4. On 20 October 2017, the Panel received a response through the representative of the MPRC providing additional information in relation to two cases, including the present one.

5. On 8 December 2017, the Panel transmitted a Statement of Facts and Questions to the Head of Mission (HoM), EULEX Kosovo, inviting the Mission to submit answers and written observations on the complaints.

6. The observations of the HoM were received on 19 April 2019 after which they were communicated to the complainants for additional observations.

7. The complainant did not submit any additional observations.

8. On 19 June 2019, the Panel rendered its admissibility decision in this case, declaring the complaint admissible in respect of Articles 2, 3, 8 and 13 of the European Convention of Human Rights (hereafter, "the European Convention" or "the Convention") (https://hrrp.eu/docs/decisions/2019-06-19%20Admissibility%20Decision%202016-10.pdf).

9. On 13 February 2020, the Panel issued its Decision and Findings in relation to the merit of the case (https://hrrp.eu/docs/decisions/2020-02-13%20Decision%20and%20Findings%202016-10.pdf). In that Decision, the Panel found that the Mission had violated the fundamental rights of the complainant under Articles 2 (procedural limb) and 3 of the European Convention. The Panel also invited the Head of Mission to consider the following recommendations:

    a) Acknowledge the violation of the complainant's rights by the Mission;

    b) Provide a copy of the present decision to:

        a) relevant organs of the Mission,
        b) relevant political authorities in Brussels and to
        c) the local authorities competent to investigate this case;

    c) Order that this case be monitored by the competent organs of the Mission;

    d) Query with the competent local authorities what steps, if any, have been taken to investigate this case and what future steps are being planned.

10. By letter of 22 December 2020, Head of Mission informed the Panel of the measures taken in response to the Panel's recommendations.

11. In accordance with Rule 45 *bis* of its Rules of Procedure, the Panel will turn to consider the HoM's submissions regarding his implementation of the Panel's recommendations.

II. FACTS

12. The facts as presented by the complainant may be summarised as follows.

13. On or about 17 June 1999, Svetozar Stambolić, the father of the complainant, Dragiša Kostić, was allegedly "dragged alive" behind a tractor in the village of Novo Selo Mađunsko, Vucitrn/Vushtri Municipality.

14. The residents of the village were forced to flee their homes and village on that date, but Svetozar Stambolić had remained in the village. He was never seen again and his disappearance was reported to the authorities.

15. When EULEX came to replace UNMIK in the period December 2008 - March 2009, an Ante-Mortem Investigation Report referring to the disappearance of Svetozar Stambolić was said to have been transferred to EULEX.

16. The Mission is also said to have received an Interpol 'Disaster Victim Identification' form filled with his details. The report indicated that UNMIK interviewed the complainant and another family member of Mr Stambolić by telephone at an unspecified date in 2005.

17. As noted above, the Panel found that the Mission had failed to investigate this case and to keep relatives of the disappeared informed, as it was required to do under its human rights obligations, and therefore violated the fundamental rights of the complainant. Recommendations were then made by the Panel with a view to try to redress the harm done to the complainant as a result of the violation of his fundamental rights.

III. FOLLOW-UP PURSUANT TO RULE 45 *BIS*

18. The Panel's first recommendation was for the Head of Mission to acknowledge the violation of the complainant's rights by the Mission.

19. The Head of Mission failed to address this recommendation.

20. The Panel will, therefore, renew its request that the Head of Mission should consider doing so. It has been highlighted a large number of times by the Panel that such a measure would be most relevant to victims and a way for the Mission to 'make amends' for its serious failure to comply with its basic human rights obligations in this case. The Panel is unconvinced by the justifications advanced by the Mission, as outlined below. Those are unverified, inconsistent with the Mission's human rights duties and would effectively render the Mission unaccountable.

21. The Panel's second recommendation was to the following effect:

> Provide a copy of the present decision to
> a) relevant organs of the Mission;
> b) relevant political authorities in Brussels; and to
> c) the local authorities competent to investigate this case;

22. The Head of Mission informed the Panel that its Decision had been 'immediately circulated to all relevant units in the Mission shortly after it was communicated to the Human Rights and Legal Office on 2 July 2020'. He added: 'Over the course of the past months, the Decision was also communicated to the local authorities competent to investigate this case and more specifically the Kosovo Police and the Special Prosecutor's Office of the Republic of Kosovo (SPRK)'.

23. The Head of Mission also indicated that

> "the relevant political authorities in Brussels are routinely informed about all the decisions and findings of the Panel and they are also receiving the Annual Report of the Panel".

24. The Panel seeks clarification as to which authorities received copy of the Decision in this case. In the Panel's view, it is essential that competent authorities in Brussels should be fully aware of the extent to which the Mission has complied with its human rights obligations, what findings have been made in that respect and what additional resources or measures might be needed to address some of the pending issues. The Panel will therefore ask the Head of Mission to clarify which Brussels-based authorities have been provided copies of the Decision and also renew its request that it be transmitted to the relevant authorities in Brussels.

25. The Panel's third recommendation was for the Head of Mission to order that this case be monitored by the competent organs of the Mission.

26. In response, the Head of Mission gave a lengthy description of the Mission's current monitoring mandate. In summary, the Head of Mission explained that,

> "in line with its current mandate [...], the Mission monitors selected cases and trials in the Kosovo justice system; in implementing its monitoring mandate, and as dictated by the EU Member States, EULEX fully respects the principle of independence of the judiciary and the principle of non-intervention in the judicial process. It cannot advise Kosovo institutions on individual cases, nor can it recommend them to prioritize one case over others or to start an investigation."

27. Furthermore, the Head of Mission indicated that the Mission would only monitor the case if local authorities decide to open and investigate this case.

28. The Panel notes that this case was brought and communicated before the Mission's current mandate. To the extent there was any concern that the foreseen new mandate could have prevented the Mission to provide an effective remedy, steps should have been taken, in the diligent exercise of its responsibilities, to accelerate the review and processing of the present case.

29. The Panel notes that the Mission has argued that its changed mandate prevents it from fully implementing several of the Panel's recommendations. While the mandate of the Mission has changed, the Panel emphasizes that the Mission is still one and the same. Its responsibility attaches to its conduct, past and present. And it is the responsibility of the Mission, as it currently stands, to remedy the violations that it has committed in the past albeit at a time when its mandate was different.

30. The Panel further considers that the proposed approach is unsatisfactory and does not provide an adequate remedy for the serious violation of fundamental human rights attributed to the Mission in this case. Nor does it reflect in any way the gravity of that violation. The Panel cannot interpret the Mission's current mandate as preventing it from repairing the harm it contributed to causing. Doing so would in effect render the Mission un-accountable *despite the Mission's human rights obligations and despite the Panel having determined that it violated those obligations*. Remedying the wrong done actually remains an obligation of the Mission under its current mandate, as it was under the previous (executive) mandate. The Panel wishes to reinforce the point that a change in mandate does not absolve the Mission from its responsibility to remedy violations committed under a previous iteration of the mandate.

31. The Panel therefore invites the Head of Mission to consider what reasonable and appropriate steps could be taken to see to it that cases involving grave violations of human rights – such as the present one – that once came under the responsibility of the Mission and which are now still un-investigated are subject to an effective review.

32. The Panel asks the Mission to outline how it proposes under its current mandate to safeguard the rights of individuals – such as the complainant – whose rights have been violated by the Mission and which continue to be violated.

33. The Panel's fourth recommendation was for the Mission to query with the competent local authorities what steps, if any, have been taken to investigate this case and what future steps are being planned.

34. The Head of Mission does not address this recommendation. Instead, a generic description of the Mission's monitoring activities is laid out.

35. The Panel therefore renews its invitation for the Mission to query with the competent local authorities what steps, if any, have been taken to investigate this case and what future steps are being planned.

36. Furthermore, while welcome, the Head of Mission's expression of sympathy does not constitute a sufficient or adequate remedy for the grave violation of the complainant's rights by the Mission.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

FINDS that the Mission has failed to follow and implement, the first, third and fourth Panel recommendations;

FINDS AND REGRETS, in particular, that the Head of Mission has failed to address the Panel's recommendation to acknowledge the violation of the complaint's rights by the Mission and **INVITES** him to issue such an acknowledgment;

ASKS the Head of Mission to clarify which authorities in Brussels have been provided by the Mission with a copy of the Panel's Decision and Findings in this case and to provide the relevant authorities in Brussels with the present follow-up decision;

RENEWS ITS RECOMMENDATION THAT the Mission should query with the competent local authorities what steps, if any, have been taken to investigate this case and what future steps are being planned;

INVITES the Head of Mission to evaluate what steps or measures could be taken by the Mission to remedy and protect the rights of those – including the complainant – which have been violated by the Mission and which continue to be violated (with particular focus on so-called 'enforced disappearance' or missing person cases);

ASKS the Head of Mission to circulate the present Decision to relevant staff within the Mission and to relevant authorities outside of it responsible for overseeing the work of the Mission;

REMAINS SEIZED of the case until further notice;

FINALLY, THE PANEL NOTES that the responsibility to provide an effective remedy for violations of rights committed by the Mission is and remains firmly with the Mission itself. To

the extent that the Mission, through the Head of Mission, is unable or unwilling to fully and completely adopts the remedial recommendations of the Panel, it remains its responsibility to find alternative means and methods of relief that provide an effective remedy for the violations that it is found to have committed;

INVITES the Head of Mission to address the Panel's requests by 30 November 2021.

For the Panel:

Guénaël METTRAUX
Presiding Member

Petko Petkov
Member

Anna AUTIO
Member