



Human Rights Review Panel

## Newsletter No. 14, 01 August 2016 - 31 October 2016

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### Recent session of the Human Rights Review Panel

The recent session of the Panel was held from 17 October to 19 October, 2016.

The Panel issued three (3) decisions on merits and found nine (9) violations of human rights by EULEX Kosovo as follows:

Cases nos: 2014-11 to 2014-17, D.W., E.V., F.U., G.T., Zlata Veselinovic, H.S. and I.R., Against EULEX; Case No. 2014-34, Rejhane Sadiku-Syla Against EULEX and Case No. 2014-37, Y.B. Against EULEX.

The Panel also issued one (1) follow-up decision on the implementation of its decisions by the Head of Mission in Case No. 2014-32 L.O. Against EULEX.

**Cases nos: 2014-11 to 2014 -17, D.W., E.V., F.U., G.T., Zlata Veselinovic, H.S. and I.R., respectively, against EULEX.**

The seven (7) complaints in these cases, [2014-11 to 2014-17, D.W., E.V., F.U., G.T., Zlata Veselinovic, H.S. and I.R., Against EULEX](#) relate to the murders of, and in some instances, the disappearances of persons of Serb ethnicity which occurred in Kosovo between 16 June 1999 and 11 March 2000. The complainants were represented by Ms Jovanka Stojavljevic-Savic, *Savic & Co Solicitors, 39 Warren Street, London W1T 6AF.*

In view of the nature of the seven complainants, which are of Serb ethnicity, and the considerable similarities that exist between the issues raised in the complaints, the Panel decided to order the formal joinder of the cases in accordance with Rule 20 of its Rules of Procedure (ROP).

In its review of the applicable law in these cases, the Panel considered the basis of the authority of EULEX Kosovo prosecutors to investigate in extraordinary circumstances as outlined in Article 7A of the Law on Amending and Supplementing the Laws related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo, (of 13 March 2008). This provision states that:

“In extraordinary circumstances a case will be assigned to a EULEX prosecutor by a joint decision of the Chief State Prosecutor and the EULEX Kosovo competent authority”.

The Panel held that the following factors, inter alia, would apply in the evaluation of the relevant facts in the determination of what constituted “exceptional circumstances”, justifying a takeover of the case by the EULEX prosecutor:

Firstly, the Panel must consider if an effective investigation of the allegations of the deprivation of life was conducted prior to the case being brought to the attention of EULEX. If this was not the case, it militated in favour of EULEX Prosecutors exercising their “exceptional” competence and taking the case over. The Panel found that that these cases had not been the subject of a full and effective investigation by any one entity, for any significant period of time.

Secondly, it must be examined whether the matters complained of relate to important rights and that the alleged human rights violations are of extreme gravity. Such factors would again weigh in favour of the “exceptional” involvement of EULEX Prosecutors. All these case under review concern fundamental rights, including the right to life.

Also, the Panel was satisfied that there was a strong likelihood that the facts complained of such as the murder and disappearance of victims were connected to inter-ethnic and/or religious factors. This fact also militated in favour of EULEX Kosovo exercising its jurisdictional competence in the context of its executive mandate.

The Panel stated that such cases should be obvious investigative priorities in a post-conflict environment in which inter-ethnic and religious relationships may be tense and fragile. The Panel concluded that this factor did not seem to have been taken into consideration by EULEX Kosovo in its determination of whether or not the “exceptional circumstances” existed in respect of the cases.

Thirdly, if the EULEX Prosecutors decide not to exercise their “exceptional” competence, the question then arises as to whether or not there is a real and genuine prospect of the Kosovo authorities discharging their investigative and prosecutorial responsibilities. There was no indication in these cases that this would occur or that appropriate actions were taken by EULEX Kosovo in order to establish the pertinent facts.

The Panel therefore recommended that the Head of Mission (HOM), inter alia, communicate the decisions to all relevant investigative and prosecutorial organs of EULEX Kosovo. The Panel further recommended that the HOM ought to impress upon the EULEX investigative and prosecutorial bodies the importance of the thorough investigation of the cases of murdered and missing persons from the time of the armed conflict in Kosovo in 1999 and thereafter.

The HOM was also invited to draw the attention of the investigative and prosecutorial authorities within EULEX Kosovo to the factors listed in the decision as being relevant to the evaluation the “exceptional” competence of EULEX prosecutors under Article 7(A) of the revised Law on Jurisdiction and to further impress upon them the importance of taking these factors into account in their assessment of whether or not they should take responsibility for the investigation of such cases.

The Panel is fully cognizant of the challenges and difficulties which emanated from the recent reconfiguration of staff in EULEX. However, within these constraints and commensurate with the importance that the Mission attaches to the effective protection of human rights, the Panel invited the HOM to ensure that the investigative bodies within EULEX Kosovo are provided with the necessary resources and the support which is required to achieve their mission effectively and in a manner consistent with the procedural protection of human rights, in particular those rights which are guaranteed by Articles 2 and 3 of the European Convention on Human Rights, (Convention).

In conclusion, the Panel found that the investigative efforts of EULEX Kosovo were inadequate in these cases and that they therefore resulted in violations of the rights of the complainants as guaranteed by Articles, 2, Right to life; Article 3, Prohibition of torture or inhumane or degrading treatment and Article 13, Right to an effective remedy in conjunction with Article 2 of the Convention.

**Case no. 2014-34, Rejhane Sadiku-Syla against EULEX.**

The complainant in this case, [2014-34, Rejhane Sadiku-Syla Against EULEX](#), Ms Rejhane Sadiku-Syla was represented by Kushtrim Istrefi Lawyer, 12 Rue de l’ecole de medicine, 1205 Geneva, Switzerland.

The father of the complainant, Mr Syle Sadiku disappeared from his residence in northern Mitrovica in the course of an attack by a group of armed persons, believed to be of Serb ethnicity on 7 December 2000. The attack was witnessed by a sister of the complainant who was later evacuated by French KFOR troops. The complainant has received no information whatsoever on the whereabouts and fate of her father since his disappearance.

The complainant submitted that EULEX Kosovo had violated her rights as guaranteed by Articles 2 and 3 of the Convention under their procedural limb. In particular, it was submitted that EULEX Prosecutors failed to initiate an investigation in accordance with Kosovo law and the mandate of EULEX Kosovo, that EULEX unduly delayed the investigative process and that in the referral of the case to Kosovo prosecutors, had neglected the seriousness of the case, the geographical location of the crime, (northern Mitrovica), the war crime character of the case and the fact that the incident had most likely been motivated by ethnic hatred.

In view, inter alia, of the inter-ethnic nature and the disappearance aspect of the case, the Panel reiterated its position on the “exceptional circumstances” provision within the meaning of Article 7 A of the above mentioned law, the same law which was examined in the context of the Veselinovic and others case, as summarized earlier.

Having regard to the circumstances of the case in their entirety, the Panel found that the investigative efforts of EULEX Kosovo, in respect of the disappearance of the father of the complainant, were inadequate. These investigative shortcomings thereby resulted in violations of the rights of the complainant as guaranteed by Articles 2 and 3 of the Convention in respect of the right to life and the prohibition of torture in their procedural limb, and those rights protected by Article 13, the right to an effective remedy, in conjunction with Article 2 of the Convention. Given these findings, the Panel considered that it was unnecessary to further review the case under Article 8 of the Convention.

### **Case no. 2014-37, Y.B. against EULEX**

On 4 July 2014 a EULEX Prosecutor with the Special Prosecution Office of the Republic of Kosovo (SPRK) filed an indictment against N.K. with the Basic Court, Pristina in which he was charged with organized crime, aggravated murder and assorted drugs offences.

The complainant's name, Y.B., was listed in the indictment. It was stated, inter alia, that N.K. "in co-perpetration" with the complainant and several other persons "did organize, establish, supervise, manage and/or direct this Structured and Organized Criminal Group (OCG) or did actively participate in this OCG, knowing that his participation will contribute to the commission of the serious crime of Aggravated Murder against rival gangster boss [R.D.] (...)".

It was further submitted that N.K. had "attended a number of meetings with [the complainant and other persons], in Bosnia and Hercegovina. The participants of these meetings formed an Organized and Structured Criminal Group to plan, plot and murder [sic] rival gangster boss R.D. (...)".

Further, the indictment referred to the testimony of one of the witnesses, who claimed that the complainant had had reason to hate the victim as the latter had been in relationship with the wife of the complainant before her marriage. The Prosecutor also requested that the complainant, together with a number of other persons, be summoned as a witness to the main trial.

The complainant argued that, in the publication of his name in the indictment, both as an alleged co-perpetrator and as a witness, the EULEX prosecutor exposed him and his family to danger to life and physical security in breach of Articles 2 and 3 of the Convention.

The complainant also submitted that, by alleging in public that the complainant was a part of a criminal organization, the EULEX Prosecutor violated Article 6 (2) of the Convention. The complainant added that, in breach of Article 6 (3) of the Convention, he was not officially informed of the cause and nature of the allegations against him, despite being effectively charged with murder. Moreover, it was alleged that the complainant was responsible for murder, yet he was denied his right to access to justice, to defend himself and to exercise his rights under Article 6 (1) of the Convention.

The complainant further alleged that the actions of the EULEX Prosecutor constituted a violation of his right to private life which encompassed his reputation. Specifically, the complainant asserted that the indictment was littered with personal attacks of sufficient gravity, such as to compromise his personal integrity. EULEX was therefore alleged to have breached Article 8(1) of the Convention: "Everyone has the right to respect for his private and family life, his home and his correspondence".

The complainant further submitted that EULEX violated his right to participate freely and fairly in democratic elections by destroying his dignity and reputation and, consequently, his political career. The complainant thereby invoked Articles 10 and 11 of the Convention.

The Panel held that, in the case [2014-37, Y.B. Against EULEX](#), EULEX Kosovo had violated the complainant's rights guaranteed by Article 8 of the Convention, namely his right to private life which encompassed his reputation. The Panel declared that the remainder of the complaints were inadmissible as they were manifestly ill-founded.

**Case no. 2014-32, L.O. against EULEX.**

On 11 November 2015, the Panel rendered its decision in relation to the complaint filed by [L.O. Against EULEX Kosovo](#) and it made a number of recommendations to the HOM in accordance with Rule 34 of the Rules of Procedure. This case related to the disappearance of the husband of the complainant on 24 June, 1999. The victim was a doctor of Serb ethnicity who worked in Pristina hospital. He telephoned his daughter at 13.00 hours on the day in question and told her that he was on his way home from the hospital. There was no further communication from him thereafter and the whereabouts of his remains are unknown to this day.

The Panel found that EULEX Kosovo had violated Articles 2 and 3, (procedural limbs) as well as Articles 8 and 13 of the Convention and made, inter alia, the following recommendations to the former HOM:

- The HOM should make a declaration to acknowledge that the circumstances of the case amounted to a breach of the rights of the complainant which was attributable to the acts and/or omissions of EULEX in the discharge of its executive mandate;
- The HOM should instruct all organs of the Mission who are in communication with alleged victims of human rights violations, or their close relatives, to ensure that they, in their communications with those persons, do so in a timely manner, with due diligence and care in order to make due allowance for the emotional trauma and distress of such persons.
- The HOM should ensure that all investigative bodies within the Mission, both the Special Investigative Task Force, (SITF) and the EULEX Prosecutors have at their disposal the necessary resources and support which is required to accomplish their mission in a manner which is consistent with the effective protection of the human rights of those persons involved as the case may be.
- The HOM should seek to clarify the relationship between EULEX Kosovo and the SITF in order to ensure the effective protection of the rights of those concerned and further, to guarantee that the entity, which is in charge of the matter, provides adequate and timely information to the complainant(s).

The HOM stated, in a letter of 29 April 2016, as follows in response to the recommendations of the Panel: "Since the Panel's recommendations concern measures that are at the disposal of the Civilian Planning and Conduct Capability, (CPCC) several EU institutions as well as Member States, I have informed the CPCC and the Contributing States of the Panel's decision and findings, through the Civilian Operations Commander, and I consider the recommendation thus implemented."

In its evaluation of the implementation of its recommendations by the former HOM, the Panel observed that responsibility for the implementation of the recommendations of the Panel falls entirely and exclusively to the HOM, not the CPCC nor to Member States.

Secondly, it was noted that the reply did not indicate what efforts, if any, were made in order to implement the recommendations of the Panel.

Finally, and contrary to the apparent assumption made in the response of the HOM, the responsibility to decide whether or not the recommendations of the Panel have been implemented rests entirely with the Panel.

The Panel noted in this regard that whilst its recommendations are not legally binding, it is essential for the legitimacy and credibility of EULEX Kosovo, as a rule of law mission, that it decisively and

credibly demonstrate its commitment to the effective enforcement of human rights by ensuring that its actions are at all times consistent with international human rights standards.

The Panel thus declared unanimously that the former HOM did not implement its recommendations and invited the new HOM to fully consider and implement each and every one of the recommendations and to duly inform the Panel of the actions taken in this regard. Finally, the Panel declared that it remains seized of this matter.

It must, however, be fully acknowledged at this juncture, that despite the issues with the foregoing L.O. case, the Panel is well pleased with the positive manner in which successive HOMs have implemented the recommendations of the Panel heretofore.

Ms Magda Mierzevska, the Presiding Member of the Panel participated in the deliberations of the Panel during this session by way of electronic communications in accordance with the provisions of Article 13(3), Rules of Procedure of the Panel.

#### **Meetings with the European External Service (EEAS) and the Committee for Civilian Aspects of Crisis Management, (CivCom) Brussels.**

The Panel, represented by the Presiding Member, Ms Magda Mierzevska and the Senior Legal Officer, John J Ryan participated in a number of meetings with Ms Jana Kaliminova, Chairperson of CivCom; Mr Bert Vermessen, Deputy Civilian Operations Commander and Chief of Staff, Civilian Planning and Conduct and Capability, (CPCC), EEAS, Mr Alexis Hupin, Desk Officer, Kosovo, European Union External Action Service, (EEAS); as well as the representatives of the Member States of the CivCom Working Group, in Brussels on 28 September, 2016.

The meeting agenda items included discussions about, inter alia,: the implementation of the recommendations of the Panel by the Head of Mission; compensation and restitution for victims; compliance with international human rights standards, Rules of Procedure of the Panel and follow-up procedure; induction training, lessons learned and the legacy of the Panel. The presiding member of the Panel also delivered a brief on the Panel to the CivCom member state representatives and engaged in a question and answer session with them.

#### **Meeting with Head of Mission EULEX Kosovo**

The Panel met with Ms Alexandra Papadopoulou, the new Head of Mission, accompanied by Ms Elaine A Pappas, Ms Marianne Fennema and Ms Heidi Lempio in the HRRP Building 17 October 2016.

Issues discussed were the challenging staff situation in the Secretariat pursuant to the reconfiguration of EULEX Kosovo, the caseload of the Panel, the implementation of the decisions of the Panel by the Head of Mission, the future legacy of EULEX Kosovo as well as the legacy of the Panel. In conclusion, the HOM said that she would welcome future opportunities to meet with the Panel.



From left to right: Heidi Lempio, Alexandra Papadopoulou, Elaine A Paplos, John J Ryan, Elka Ermenkova and Guenael Mettraux

### **Meeting with the European Union Special Representative in Kosovo**

The Panel also met with Ms Nataliya Apostolova, European Union Special Representative who was accompanied by Shaban Murturi, EUSR HQ, Kosovo Street No. 1, Pristina on 17 October 2016.

The following issues arose in discussions: the compliance of EULEX Kosovo with the recommendations of the Panel, the case load of the Panel and the nature of the complaints which came before the Panel, the necessity for human rights accountability mechanisms in Common Security and Defence Policy executive authority missions as well as the legacies of both EULEX Kosovo and the Panel. In conclusion, the EUSR said that she would welcome future such meetings with the Panel.



Left to right: Elka Ermenkova, Guenael Mettraux, John J Ryan, Shaban Murturi and Nataliya Apostolova

## **Human Resources**

Ms Katja Dominik, EULEX Kosovo Panel Member and Criminal Judge, Basic Court, Mitrovica resigned as the EULEX Kosovo Member of the Panel on 14 June 2016 in order to concentrate on her increased judicial responsibilities in the Basic Court, Mitrovica.

Ms Elka Ermenkova, Criminal Judge of the Supreme Court/Appellate Court, Pristina and EULEX Kosovo Substitute Member of the Panel was appointed as the substantive EULEX Kosovo Member of the Panel on 14 October, 2016.

Ms Anna Bednarek, Appeals Judge, Kosovo Property Agency Appeals Panel, Pristina was appointed as the EULEX Kosovo Substitute Member of the Panel on 14 October, 2016.

Ms Magda Mierzewska, the Presiding Member of the Panel avails of this opportunity to thank Ms Dominik for her outstanding professional contribution to the work of the Panel during her four (4) plus years of dedicated service and to wish her every success in her current assignment and in future career.

Ms Mierzewska also takes this opportunity to extend her congratulations to Ms Ermenkova on her recent appointment as the new EULEX Kosovo substantive Member of the Panel.

She further extends her congratulations to Ms Bednarek on her appointment as the EULEX Kosovo Substitute Member of the Panel and welcomes her back to the Panel in her capacity as the Substitute Member.

Legal Officers, Paul Landers and Joanna Marszalik completed their assignments with the Panel on 16 August and 30 September respectively. Ms Magda Mierzewska, on behalf of the Panel would like to express her gratitude to them both for their significant contributions to the operations of the Panel and to wish them continued success in their professional careers.

Ms Mierzewska also avails of this opportunity to express her gratitude to Ms Shpresa Gosalci, Administrative Assistant/Language Assistant for her overall contribution to the work of the Panel during the last six (6) years. Ms Gosalci completes her assignment with the Panel on 14 November.

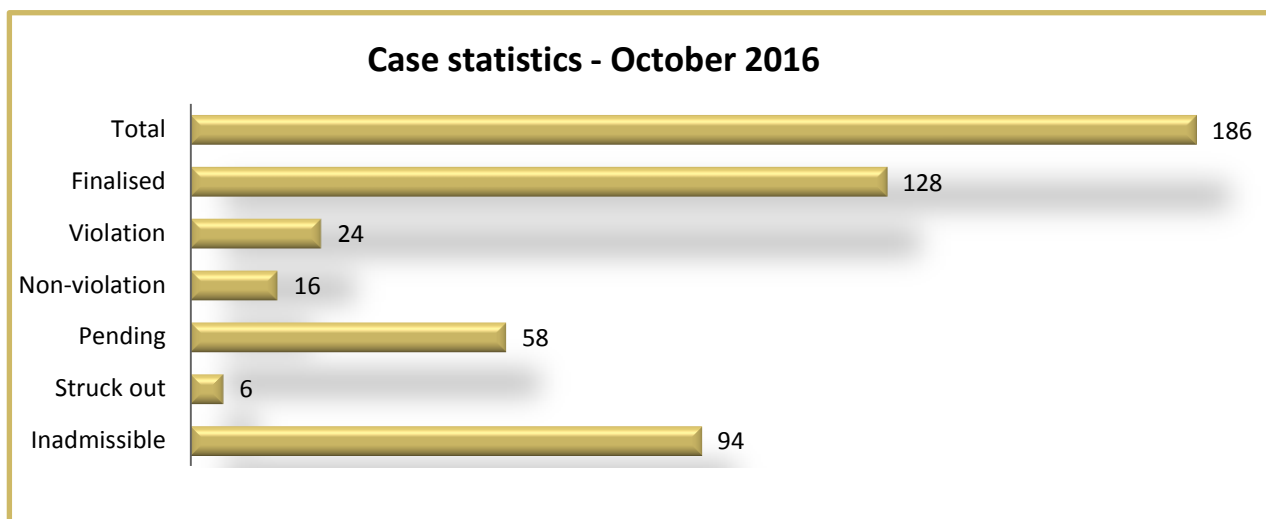
She further takes this opportunity to welcome the new Panel Legal Officer, Noora Aarnio, Legal Officer, Court of Appeals, Supreme Court to her new assignment with the Panel and to wish her every success in her new post.

Finally, on personnel matters, it may be noted, that at the time of writing, that the Panel has had to operate with the services of just one (1) legal officer since the departure of the two (2) legal officers on 16 August and 30 September respectively as outlined above.



## Case statistics

There has been a significant increase in the case load of the Panel so far this year with some thirty four (34) new complaints having been registered. The Panel reviewed some twenty two (22) cases to date this year and it has found that EULEX Kosovo committed nine (9) human rights violations. There are currently fifty seven (57) cases pending before the Panel.



## Next session of the Panel

The next session of the Panel is scheduled to take place from 9 to 11 January 2017.

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: +381 (0) 38 78 2125

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

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

### 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 form.