



**DECISION ON THE IMPLEMENTATION OF THE
RECOMMENDATIONS OF THE HUMAN RIGHTS REVIEW PANEL**

Date of adoption: 11 January 2017

Case No. 2014-18

Fitim Maksutaj

Against

EULEX Kosovo

The Human Rights Review Panel, sitting 11 January 2017, with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél 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 of 9 June 2010,

Having deliberated, decides as follows:

I. DECISION OF THE PANEL OF 12 November 2015

1. On 12 November 2015 the Panel took the following decision on the complaint made by Fitim Maksutaj 19 March, 2014:

“ The Panel, unanimously:

1. Declares the complaints with regard to the criminal proceedings taken against the complainant by EULEX between January 2009 and 15 December 2014, admissible;
2. Finds that there has been a violation of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
3. Declares that in light of the above findings of fact and law it is appropriate to make recommendations to the HOM, and

RECOMMENDS THE FOLLOWING ACTIONS:

- 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.
- The HOM should undertake all necessary measures to conduct an examination of what steps could be taken by the Office of the Chief EULEX Prosecutor (OCEP) to ensure that cases under the authority of that Office are dealt with in accordance with the provisions of Article 6(1) of the Convention and that an effective review mechanism is put in place to ensure that all such cases are dealt with within a reasonable time. In this regard, the Panel draws attention to the fact that when the instant case was subject of a review by the OCEP, the case was brought to a speedy conclusion.”

II. INFORMATION FROM THE HOM EULEX

2. On 21 January 2016, the HOM stated that with regard to the second recommendation of the Panel, the case in question was never under the authority of the Office of the Chief EULEX Prosecutor (OCEP). He said that OCEP had only limited functions vis-a-vis the Kosovo legal system, (namely that which is foreseen in Article 32 A of the Law on State Prosecutor) and for the rest, it is an office internal to the Mission

whose acts do not have effect on the Kosovo judicial system.

3. He said that in fact there are no cases under the competence of OCEP as such. The prosecutors that work in OCEP are embedded in the corresponding Kosovo prosecutions offices, namely, the Appellate prosecution office and the Office of the State Prosecutor and do not have, individually, the competence to manage cases falling under the competence of other offices.
4. The HOM further said that the case in question was not a case falling within the competence of the EULEX prosecutors as per Article 1.A.1 or Article 7 A of the Law on Jurisdiction, as amended in 2014. The initiative of OCEP in this case was a measure of last resort due to the fact that the EULEX prosecution office that inherited its functions was dismantled in October 2014 and the prosecutors that actually worked on or should have worked on the case had already left the Mission.
5. Therefore there was simply no EULEX prosecution authority competent to address the grievance raised by the complainant. Thus the initiative of OCEP, although inspired by a concern for the possible violation of the human rights of the Complainant, was from a formal legal point of view, the management of a case that was ultra vires.
6. The HOM additionally stated that the Mission was currently examining how to put in place effective standards for the review of cases handled by EULEX prosecutors.

III. INFORMATION FROM THE COMPLAINANT

7. The Complainant was provided, on 22 January 2016, with a copy of the letter from the HOM which was dated 21 January 2016 on the action taken by the HOM in the implementation of the recommendations of the Panel. The Complainant did not respond to this letter nor did he comment on the actions taken by the HOM.

IV. EVALUATION BY THE PANEL

8. The Panel takes note of the steps taken by the HOM to follow its recommendations, in particular, that the Mission was currently examining how to put effective standards in place for the review of cases handled by EULEX prosecutors.

9. However, the Panel further notes that the HOM made no declaration, in any form, to acknowledge that the circumstances of the case amounted to a breach of the rights of complainant that were attributable to the acts of EULEX Kosovo.
10. Having examined the information provided by the HOM with regard to the implementation of the recommendations,

THE PANEL UNANIMOUSLY

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

Decides to close the examination of this case.

For the Panel,


John RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member