



DECISION ON ADMISSIBILITY

Date of adoption: 19 June 2019

Case nos. 2016-14

Milan Ađančić

Against

EULEX

The Human Rights Review Panel, sitting on 19 June 2019 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Ms Anna BEDNAREK, 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 15 January 2019,

Having deliberated, 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. The complainants initially responded through their Representative that they had no further information in relation to those cases.
4. On 20 September and 17 October 2017, the Panel sent two further requests for additional information to the said Representative.
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 19 January 2019, the Mission was requested again to provide answers to the questions by 16 February 2019.
8. The observations of the HoM were received on 12 March 2019 after which they were communicated to the complainants for additional observations. The facts and circumstances relevant to this case are generally similar in kind and closely connected to those relevant to case 2016-09 (Miroslav Trifunović).
9. On 15 March 2019, the HoM's letter was submitted for information to the complainant, who was given until 15 April 2019 to make any further submissions in response to that letter.
10. The complainant did not avail himself of the possibility of making additional submissions.

II. COMPOSITION OF THE PANEL

11. Following the resignation of one of its permanent members, the Panel will sit in this matter with only two members in accordance with Rules 11 and 14 of the Panel's Rules of Procedure.

III. FACTS

12. The facts as presented by the complainant may be summarised as follows.
13. On 22 June 1998, Dušan Ađančić, the father of the complainant, Milan Ađančić, was kidnapped on his way to work near the Belačevac mine, Municipality of Fushë Kosovë/Kosvo Polje. On that day, he disappeared in unknown circumstances and was never seen again.
14. The complainant and his family notified the Ministry of Interior of the Republic of Serbia, the ICRC in Serbia as well as UNMIK and, subsequently, EULEX Kosovo.

IV. COMPLAINT AND STANDING

15. The complainants refer to two particular fundamental rights reflected in the following provisions: 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.
16. In addition to these provisions, the Panel decided *proprio motu* to also communicate and examine the case under Articles 8 and 13 of the Convention. The same fundamental human rights are guaranteed by a number of other international treaties, including the International Covenant on Civil and Political Rights.
17. These rights form part of a core set of fundamental human rights that are guaranteed to all as a matter of customary international law.

18. Considering the close family relationship between the primary victim - Dušan Ađančić – and the complainant - Milan Ađančić – 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.

V. SUBMISSIONS OF THE PARTIES

The complainant

19. As summarised above, the complainant alleges that, in the exercise of its executive mandate, EULEX Kosovo should have investigated the disappearance of his father and culpably failed to do so in violation of his and his father’s fundamental rights.

Head of Mission (“HoM”)

20. In her letter of 12 March 2019, the HoM indicates that as part of the transfer of files from UNMIK to EULEX Kosovo, a number of UNMIK police documents referring to the disappearance on 22 June 1998 of nine male individuals employed at the Bellaqevc/Belaćevac mine including Dušan Ađančić were transferred to EULEX Kosovo. The disappearances were recorded by UNMIK under three case numbers: a case number given by the UNMIK Police Missing Persons Unit (MPU) referring to the disappearance of nine individuals, a case number from another branch of the UNMIK Police, the Central Criminal Investigation Unit (CCIU) referring to eight individuals, and a case number from the UNMIK Police Leposavić Station referring to nine individuals. According to information from the MPU file, the complete case-file was transferred to the chief of CCIU for further investigation in February 2000; the HoM notes that it would appear that the documents from the two files were not merged.
21. The HoM further suggests that the documents from the files generated by the MPU and UNMIK Police Leposavić Station were handed over to the EULEX Kosovo staff working in what is now called the Institute of Forensic Medicine IFM (previously the Department of Forensic Medicine). The documents contained in the file generated by the CCIU together with some but not all documents from the MPU file were handed over to the EULEX Kosovo War Crimes Investigation Unit (WCIU).
22. At an unspecified date, the UNMIK CCIU case file was handed over to the EULEX Kosovo WCIU as a closed war crimes investigation and its content was reviewed at the beginning of the Mission’s mandate in 2009 by the WCIU and by the EULEX Kosovo Prosecutor in the SPRK. An SPRK number was subsequently assigned to the case-file.
23. Information contained in the files handed over from UNMIK suggests that the disappearance of Mr Ađančić was reported to the Serbian authorities, to the International Committee of the Red Cross (ICRC) and to UNMIK. The file also contains a statement dated 24 July 2001 given by the father of Dušan Ađančić to the Ministry of Interior of the Republic of Serbia.
24. According to the HoM, the MPU case file related to this case “appears to have been transferred only to the EULEX Kosovo staff in the Institute of Forensic medicine. Currently there is no indication that EULEX Kosovo WCIU received the same file.”
25. On 28 January 2008, UNMIK representatives spoke to the complainant, Milan Ađančić.

26. The HoM notes that it was apparent that files received from UNMIK were incomplete and, in many cases, not properly organised. The HoM also points to the fact that UNMIK sometimes organised and named files incoherently and contradictorily and that the same case was sometimes recorded under several files rather than combined into a single investigative file. As a result, the review of these files by the Mission turned out to be a massive challenge, which was hampered by various challenges including the lack of a case management system, the high turn-over of staff and the reconfiguration of the WCIU in 2014 “which resulted in the deletion of its intelligence and research capacity”.
27. It would appear that the content of the police ‘war crimes’ files and that of the ‘missing persons’ files were not compared or merged by the Mission immediately after the hand-over from UNMIK.
28. The HoM also points out that the UNMIK files do not reveal or suggest that UNMIK would have conducted any meaningful investigative steps in this case.
29. The HoM also says that given the limited resources at the disposal of the Mission at the time, the EULEX Kosovo WCIU prioritized the review of so-called ‘war crimes files’ over the ‘missing persons’ files. Efforts to compile all the information available to the different EULEX Kosovo units into the ZyLAB began only in 2017 and could not be completed prior to the hand-over to Kosovo institutions in June 2018.
30. In January 2009, the EULEX Kosovo WCIU forwarded the UNMIK CCIU file pertaining to the complaints at stake to the EULEX Kosovo Prosecutor in the SPRK for review and assessment. The names of two individuals were mentioned as ‘suspects’ in a 2007 case analysis document; the same document indicated that there was no evidence to support the allegations against these two individuals. The file also contained a limited number of documents, including the criminal reports to the “International Prosecutor Office of the District Public Prosecutor” filed by three relatives of four of the victims, including Mr Ađančić.
31. On 20 July 2009, the EULEX Prosecutor in the SPRK issued a Ruling to dismiss the UNMIK Police CCIU police report. The Prosecutor based his conclusion on the fact that the file contained “no elements that could lead to the identification of a possible suspect and also that it was deemed unlikely that further investigation by the police would provide sufficient information”. The Ruling lists five ‘injured parties’, including Mr Ađančić.
32. The HoM submits that the EULEX Kosovo Prosecutor only examined one part of the documents handed over by UNMIK as he does not appear to have been aware of additional documents handed over to the Forensic Institute.
33. On the same day, the EULEX Kosovo SPRK Prosecutor issued notices of dismissals of the criminal report addressed to the relatives of four of the five injured parties mentioned in the Ruling, one of them being Mr Ađančić.
34. Regarding the legal characterisation of cases, the HoM makes the following observations. The view was seemingly taken that for a case to be regarded as a “war crime” case, the crime should have occurred between the period of February 1998 and 21 June 1999 when an armed conflict was thought to have existed in Kosovo. Under the “Law on SPRK” and the “Law on Jurisdiction”, in the period 2008-2014, EULEX Kosovo prosecutors had exclusive competence to prosecute cases of war crimes and other categories of serious crimes. The HoM indicates in that respect that:

“From a review of EULEX Kosovo records it emerges that whenever EULEX Kosovo prosecutors came across a case-file pertaining to alleged criminal offences (including murders and kidnappings) [that] occurred after 21 June 1999, they considered themselves incompetent and forwarded the cases to the relevant District Prosecution Offices. EULEX Kosovo understands that in the Human Rights Review Panel’s view, a number of these cases could have been investigated by the SPRK as “war crimes” or “crimes against humanity” provided that the elements of these criminal offences were deemed to exist. However, the Mission must conclude that at the relevant time, EULEX Kosovo’s prosecutorial authorities considered that, in light of the limited available resources and the high backlog of war crimes cases, forwarding these cases to the District Prosecution Offices was the right course of action.”

The HoM notes that enforced disappearance cases were investigated and prosecuted by the Mission under the broader umbrella of “war crimes” cases.

35. In 2011 and 2012, the EULEX Kosovo staff at the Department of Forensic Medicine conducted excavations on a site where it was believed that the bodies of the nine missing employees of the mine were buried. The excavation did not lead to any relevant findings.
36. In July 2013, the United Nations Human Rights Advisory Panel (HRAP) issued a decision on complaints filed by the family members of several individuals who disappeared on 22 June 1998, including Mr Ađančić. The HRAP found a violation of the fundamental rights of the victims attributable to UNMIK and recommended, inter alia, to UNMIK to press EULEX Kosovo and local authorities to take all possible steps to investigate this matter. HRAP’s decision was forwarded to the Mission on 15 November 2013.
37. On 26 November 2013, the EULEX Chief Prosecutor wrote to the Head of SPRK (who at the time was a EULEX Prosecutor) to bring the HRAP Decision and the cases in question to his attention and asking that possible actions be taken in relation to those. The HoM says, however, that EULEX Kosovo is “not aware of the measures that the Head of SPRK may have decided to take on these cases”.
38. On 11 June 2018, a EULEX Kosovo SPRK Prosecutor wrote a letter to notify the three relatives of the disappeared who had filed criminal reports with the “International Prosecutor Office of the District Public Prosecutor” in 2009; the letter stated that this step was being undertaken because the case file did not contain proof that the dismissal had been previously notified to them. In order to ensure the delivery of the letter to the injured parties in Serbia, on 12 June 2018, the Chief EULEX Kosovo SPRK Prosecutor sent a mutual legal assistance request to the Serbian authorities through the Kosovo Ministry of Justice Department for International Legal Cooperation.
39. The HoM indicates that it is unable to establish whether any family members of the disappeared ever contacted the EULEX Kosovo WCIU or the EULEX Prosecutors. The HoM notes, furthermore, that the UNMIK CCIU file was handed over to the EULEX Kosovo WCIU whilst the Mission does not know why the UNMIK MPU file was handed over only to the EULEX Kosovo Staff of the Institute of Forensic Medicine. The HoM concludes:

“Therefore, while it can be said that EULEX Kosovo became aware of the disappearances of Mr Ađančić following the hand-over from UNMIK in 2008-2009, its police and prosecutorial authorities only became aware of the information contained in the CCIU/WCU file and were not aware that additional

information existed in a separate file transferred to the EULEX Kosovo staff in the Institute of Forensic Medicine.”

40. On 5 November 2018, the SPRK case-file was transferred by the Mission to the Kosovo Institutions. The accompanying cover letter indicated that the case had been ‘dismissed’ by EULEX in July 2009 but also invited the Kosovo authorities to conduct their own evaluation of the matter to verify “if they were still in possession of any further material pertaining to the case”.
41. The Mission is not aware of any ongoing investigation into this case by the Kosovo authorities.
42. Taking notice of the Panel’s case law, the HoM does not dispute the admissibility of the case.

VI. THE PANEL’S ASSESSMENT

Mandate of the Panel (Rule 25, paragraph 1, of the Rules of Procedure) and competence ratione materiae

43. As noted above, the HoM does not dispute the admissibility of this case.
44. Having reviewed the relevant requirements of admissibility, the Panel is satisfied that the case is indeed admissible.
45. 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 on 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.
46. 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.
47. 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 in the justice, police and customs sectors.
48. The Panel has 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). This is the case of positive acts or culpable failures.
49. The rights subject to the present complaint are among the most important of all fundamental rights. They touch upon core interests of the alleged victims and must be guaranteed in all circumstances. The practice of enforced disappearance constitutes an egregious violation of these rights. This is reflected, *inter alia*, in the fact that it is now regarded and characterised as a crime against humanity, in particular, in the Statute of the International Criminal Court (Rome Statute, Article 7(1)(i)) and in the Law on

Specialist Chambers and Specialist Prosecutor's Office (Law No.05/L-053) (Article 13(1)(i)).

50. The Panel is satisfied that the events under scrutiny came *ratione materiae* within the scope of responsibility of the Mission, in particular but not only, through the mandate of its Prosecutors and Forensic Institute. The Panel notes in that regard that the case-file was in fact subject to a review by the EULEX Kosovo.
51. The implications of the changes in the mandate of the Mission following the conclusion of the executive mandate of the Mission in June 2018 and the implications thereof for the purpose of this case will be addressed, where necessary, in its decision on the merits. Parties are invited to address that issue if they wish to make further submissions in relation to the merits of this matter.

Competence ratione temporis

52. The Panel notes, furthermore, that the complainant took a variety of steps to see to it that the matter should be investigated by those which he considered competent to do so. It does not appear that he was formally disabused by any of the authorities concerned that they were either not competent or would not look into his request. The Panel's competence *ratione temporis* is not disputed by the HoM and the Panel is satisfied that this requirement is met and that the complainant complied with the requisite 6-month deadline within which to file a complaint.
53. The Panel notes that, *ratione temporis*, it is competent to consider the actions of the Mission until 14 June 2018. After that date, the Mission did not have any executive responsibilities over that case. Activities carried out after that date could be relevant, however, to evaluate the extent to which the Mission has fulfilled its human rights obligations. The Panel therefore invites the Mission to make reference in its submissions to any effort undertaken by the Mission to ensure that this case was being investigated (if any), including after that date or any other step taken which the Mission considers relevant to the fulfilment of its human rights obligations.

Competence ratione personae

54. The HoM does not dispute the Panel's competence *ratione personae* and the Panel is indeed satisfied that it is competent in that respect too.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

DECLARES ADMISSIBLE, without prejudging the merits of the matter, the complaints with regard to alleged violations of Articles 2, 3, 8 and 13 of the European Convention of Human Rights; and

ASKS THE PARTIES TO ADDRESS THE FOLLOWING QUESTIONS:

I. TO THE HEAD OF MISSION:

- i. Were the files pertaining to this case in possession of the Forensic Institute ever shared with EULEX Prosecutors? If not, what is the reason?

- ii. What steps (if any) were taken by the Mission to ensure coordination between its various organs to centralise and share information pertaining to ongoing investigation of serious criminal offences, including cases of “enforced disappearances”?
- iii. Is the Mission competent to monitor this case without local authorities having initiated an investigation into it? If not, what is the Mission empowered to do when, in its view, local authorities fail to fulfil their – procedural – obligations under Article 2 or 3 of the Convention?
- iv. Please provide a copy of the letter of 11 June 2018. Did the Mission conduct a similar exercise in every case to ensure that the relatives of disappeared individuals were notified of the dismissal of the case where this had occurred during EULEX mandate or is this course peculiar to this case?
- v. In its submissions, the Mission indicated that ‘it was deemed unlikely that further investigation by the police would provide sufficient information’ (see, above, para. 31). What were the factors or considerations leading up to that conclusion? Who was it made by and when?
- vi. In its submissions (summarized in paragraph 26 above), the Mission indicates that as a result of reconfiguration of the WCIU in 2014, the Mission’s intelligence and research capacity was deleted. Who took that decision? Based on what factors and considerations?

II. TO THE COMPLAINANT:

- i. What contact did you have with the EULEX Mission during the period 2008-2014 in relation to this case? In particular, what was the nature and extent of your contacts with EULEX’s Forensic Institute?
- ii. Please describe the effect – financial, personal and emotional – that the disappearance of your relative has had upon you.

For the Panel,

Guénaél Mettraux
Presiding Member

Anna Bednarek
Member