



FOLLOW-UP DECISION ON THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE HUMAN RIGHTS REVIEW PANEL

Date of adoption: 11 December 2019

Case no. 2017-02

Zufe Miladinović

Against

EULEX

The Human Rights Review Panel, sitting on 11 December 2019 with the following members present:

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

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint in this case was registered on 19 April 2017. The complaint concerned the enforced disappearance of a close relative of the complainant and the alleged failure of the Mission to provide effective protection of the fundamental rights of the complainant in that context.
2. By a decision of 27 March 2019, the Panel declared the case to be admissible ([http://hrrp.eu/docs/decisions/2019-03-27%20Admissibility%20Decision%202017-02%20\(Red.\).pdf](http://hrrp.eu/docs/decisions/2019-03-27%20Admissibility%20Decision%202017-02%20(Red.).pdf)).
3. On 19 June 2019, the Panel rendered its Decision and Findings in this case, finding that the fundamental human rights of the complainants guaranteed by Article 2 (procedural limb) and Article 3 of the European Convention of Human Rights had been violated by the Mission in the performance and fulfilment of its executive responsibilities

<https://hrrp.eu/docs/decisions/2019-06-19%20Decision%20and%20Findings%202017-02.pdf>).

4. In that Decision, the Panel also made the following recommendations to the Mission:
 - i. Considering the gravity of the violations under consideration, the Panel invites the Head of Mission to carefully consider the possibility and the need for the Mission to acknowledge the violation of the complainant and her husband's rights committed by the Mission;
 - ii. The Panel also invites the Head of Mission to consider what actions, within its current mandate, could be taken to contribute to efforts being undertaken in relation to this case to see to it that the fate of the complainant's relative is established and that perpetrators are brought to justice;
 - iii. The Panel further recommends that EULEX should urge competent local authorities in Kosovo to take all possible steps in order to ensure that the criminal investigation into the disappearance of Mr Miladinović is continued in compliance with Articles 2 and 3 of the ECHR so that the perpetrators can be brought to justice. In particular, the Panel invites the Mission to inquire whether those authorities have or plan to adopt the investigative measures suggested by the Mission at the time of transmission of the case-file in this case.
 - iv. The Mission should continue to monitor developments in this case and press the local authorities to investigate it. Should the Mission determine that the authorities are unwilling to do so, it should report this fact to higher political authorities.
 - v. The Panel recommends that the present decision be communicated to those authorities and be circulated to all relevant organs of the Mission.
5. The Panel asked the Head of Mission to inform the Panel of the steps taken to implement the Panel's recommendations and to do so no later than 16 September 2019.
6. On 4 October 2019, the Mission wrote to the Panel in response to that request. The Mission indicated the following regarding the implementation of the Panel's recommendations. First, in line with its established practice, the Mission disseminated the Panel's decision to all relevant units within the Mission and will also communicate it to the Civilian Operations Commander in the Civilian Planning and Conduct Capability of the European External Action Service (EEAS).
7. Second, the Acting Head of Mission expressed his 'regret for the fact that the Mission had been unable to ascertain what happened to Srboljub Miladinović and [about the fact that] the complainant, Ms Miladinović was only notified about the dismissal of the criminal report in December 2015'.
8. Third, the Mission noted that under its current mandate, EULEX Kosovo retains executive capacity to support the Kosovo Institute of Forensic Medicine and that should credible information come to light, it would stand ready to support Kosovo institutions in any efforts to find Mr Miladinović and other missing persons.
9. Fourth, the Mission also indicated that it is monitoring selected cases and trials in Kosovo's criminal and civil justice institutions, 'in close coordination with other EU actors'. This includes but is not limited to cases handed over by the Mission to competent Kosovo institutions. The Mission adds in that respect that while it cannot give instructions

to those institutions, 'it can support the competent authorities by providing recommendations addressing systemic issues'. In this context, the Mission also specified that upon the request of the Kosovo police, 'in the course of 2019 EULEX has been providing support to the War Crime Investigation Unit with a view to enhancing their investigating and analytical techniques and building an effective case management system'. This, the Mission submitted, is intended to build up local authorities' capabilities 'with a view to building cases for prosecution'.

10. Finally, the Mission made the following submissions:

'While EULEX is unable to urge local authorities in Kosovo to prioritize the investigation of this disappearance over other cases, since this is not allowed under its current mandate and it would undermine the independence of the prosecution authorities, I have instructed the Mission to share this Decision and Findings with the competent institutions. Should the authorities decide to reopen the case, EULEX will monitor any developments.'

II. COMPOSITION OF THE PANEL

11. Following the resignation of one of its permanent members, a member of the Panel was replaced by its newly appointed member, Ms Anna Autio, in accordance with Rule 14 of the Panel's Rules of Procedure. In order to ensure full familiarity with the case, Ms Autio acquainted herself with the full record of the case, including as regards its admissibility, and is therefore fully able to participate in the deliberations of this case.

III. DELIBERATIONS

12. The present Decision is a follow-up to the Panel's 19 June 2019 Decision adopted in accordance with Rule 45*bis* of the Panel's Rules of Procedure.
13. Regarding the steps taken by the Mission in the implementation of the Panel's Decision and recommendations, the Panel commends the Mission for ensuring the dissemination of its Decision and Recommendations to the relevant organs of the Mission and Kosovo authorities.
14. The Panel also takes note of the fact that the Mission is seeking to use its current mandate to build the capacity of local authorities so that those authorities are able to fulfill their own human rights obligations towards all those whose case comes under their competence and jurisdiction.
15. The Panel also takes notice of the Acting Head's expression of regret for some of the shortcomings that have negatively impacted the resolution of this case. The Panel notes, however, that this expression of regret falls short of the Panel's recommendation, namely, that the Mission should acknowledge its responsibility in the violation of the complainant's fundamental rights. The Panel regrets that the Mission continues to feel unable to do so and invites the Acting Head of Mission to raise this issue with competent EU authorities in Brussels. The Panel would invite the Head of Mission to consider seeking guidance from competent authorities on that point, in particular, as regards the way in which the Mission could fulfill the standard set out in the Council Decision 2018/856 in this and similar situations.
16. The Panel notes, however, that the rights of the complainant in the present case are still being violated as the case of her missing relative remains un-investigated.

17. The Panel also takes the view that the steps thus far taken or proposed by the Mission in order to address the Panel's findings and recommendations do not provide an adequate or effective response to the violation of the rights of the complainant. In the Panel's view, they do not constitute a necessary and appropriate response thereto.
18. In this regard, the Panel notes the following: despite the June 2018 change in the nature and scope of its mandate, the Mission continues to be required to ensure that all its activities respect international human rights standards. See 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 * (EULEX KOSOVO), L 146/5, 11 June 2018 (hereafter, 'Council Decision of 8 June 2018'), Art. 3(e) (Art. 1 (2) of the Council Decision of 8 June 2018, amending Art. 3(e) in the Joint Action).
19. This necessary commitment to ensuring full respect for human rights is apparent, not only from the terms of Council Decision of 8 June 2018, but also from the Mission's own website, which expresses its commitment and dedication to the inclusion of human rights in all of its activities (<https://www.eulex-kosovo.eu/?page=2,60>):

The Mission's human rights obligations imply, *inter alia*, an obligation to provide adequate relief and remedy for violations of rights that have been attributed to the Mission.

20. In that sense, the Mission is bound and committed to perform its current and remaining responsibilities in a manner consistent with relevant human rights standards.
21. The Council Decision of 8 June 2019 draws no distinction as far as the Mission is concerned between active or inactive cases, those being investigated by local, Kosovo, authorities and those that are not. Instead, the Mission's monitoring competence covers in principle the entire chain of the criminal justice system, namely on police, prosecutorial and judicial level:

EULEX's Case Monitoring Unit assesses the functioning of the Kosovo judiciary in terms of procedural, legal and human rights compliance. The assessment is carried out through robust systemic and thematic monitoring of selected criminal and civil cases, including high-profile cases and cases previously dealt with by EULEX. The Mission monitors the entire chain of the criminal justice system, namely on police, prosecutorial and judicial level. (See, e.g., <https://www.eulex-kosovo.eu/?page=2,10,1069>).
22. Consistent with the Mission's overarching human rights obligations – and its stated commitment to uphold those standards – the Panel therefore infers from this that in the selection of cases (and trials) that it should monitor, the Mission must pay particular attention to the need to ensure that relevant human rights standards are upheld. Thus, cases where there is a credible risk of violation of those standards or where violations are ongoing should be treated *prima facie* as cases of interest for the Mission's monitoring activities. This also means that the Mission could not remain inactive where it knows of cases (or trials) where such standards are not being respected or where violations of rights are occurring or ongoing.
23. This also means that for this monitoring activity to be consistent with the Mission's human rights obligations, it must per force imply that the Mission would be required to address, in a manner consistent with the Council Decision of 8 June 2018, any rights violation for which it could be held responsible.

24. The Council Decision of 8 June 2018 does not specify how the Mission should act or react where its monitoring activities reveal practices that are inconsistent with international human rights standards.
25. However, it is apparent from the existing practice of the Mission that it would be able to report on its findings and conclusions regarding monitored cases. Such reporting has been addressed to local and EU authorities, as well as third parties, at both technical and political level. Monitoring activities and the associated reporting have focused, *inter alia*, on assessing local authorities' compliance with relevant human rights standards. (See, e.g., <https://www.eulex-kosovo.eu/?page=2,10,1069>).
26. The practice of the Mission also indicates that, where appropriate, the Mission can invite local authorities to adopt investigative measures and to seek the Mission's guidance or assistance in a given case. See, e.g., Milorad Trifunović against EULEX, Decision on Admissibility, Case no. 2016-09, 19 June 2019, para 29 (<https://hrrp.eu/docs/decisions/2019-06-19%20Admissibility%20Decision%202016-09.pdf>).

It is apparent from the above that the Mission has yet to explore fully what possibilities exist to ensure that the violation of the rights of complainant is remedied and that their violation comes to an end. The Panel invites the Mission to give careful consideration to what possibilities exist for the Mission to contribute to that end in a meaningful and effective manner. The Panel also asks the Mission to inform the Panel of the result of those considerations and what measures the Mission proposes to adopt to achieve that goal.

27. Finally, the Panel notes with some concern that the operational documents of the Mission do not appear to specify – at least not in documents available to the Panel – what concrete steps should be taken by the Mission, and how the effectiveness of these steps should be evaluated and reported on, if and when human rights concerns arise as a result of its monitoring of a case or trial, so that the operational practice of the Mission's monitoring meets the human rights standard stated in Council Decision of 8 June 2018. Nor is it clear on what basis cases or trials are selected for monitoring purposes and what role, if any, international human rights standards play in that regard. The Panel again invites the Mission to clarify what steps or measures would be open to the Mission to adopt in such a case.
28. In light of the above, the Panel is not satisfied that the steps thus far taken by the Mission provide an adequate remedy for the violations of the complainant's rights. For that reason, the Panel will remain seized of this case and asks the Mission to address the above concerns and queries, outlined below.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

Invites the Mission to further consider what steps could be taken to provide adequate remedy for the violation of the complainant's rights in this case and to ensure that the violation of the complainant's rights come to an end and invites the Mission to inform the Panel of the result of those considerations and what measures the Mission proposes to adopt to achieve that goal;

Further invites the Mission to consider what steps or measures to adopt institutionally to ensure that cases of enforced disappearance that it failed to investigate are not left untouched by local authorities;

The Mission should consider what steps could be taken to ensure that such cases are being treated as rule of law priorities by those authorities;

Further invites the Mission to consider what concrete steps could be taken by the Mission, and how the effectiveness of these steps should be evaluated and reported on, if and when human rights concerns arise as a result of its monitoring of a case or trial and invites the Mission to report to the Panel on that point;

The Panel also invites the Mission to consider adopting clear policy standards regarding the monitoring of cases and trials that, *inter alia*,

- a. Expressly provide that cases raising human rights concerns should be prioritised;
- b. Outline what steps or measures the Mission could take to address situations where monitoring activities raise human rights issues, and how it could assess and report on the effectiveness of these steps or measures from the perspective of its mandate and human rights obligations;

Invites the Acting Head of Mission to raise with competent EU authorities the question of the possibility for the Mission to acknowledge its responsibility for the violation of rights violations identified by the Panel;

And, in cases where the Mission has shared the Panel's decision and findings with the competent authorities, to keep the Panel informed of updates in this respect, as appropriate;

Keeps the present case open for possible further follow-up; and

Invites the Mission to provide additional submissions regarding the present Decision and recommendations by no later than 16 March 2020.

For the Panel,

Guénaël METTRAUX
Presiding Member

Anna BEDNAREK
Member

Anna AUTIO
Member