



DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 11 December 2020

Case no. 2016-17

Milijana Avramović

Against

EULEX

The Human Rights Review Panel, sitting on 11 December 2020 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Ms Anna BEDNAREK, Member
Ms Anna AUTIO, Member

Assisted by
Mr Ronald HOOGHMSTRA, 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. By letter of 1 July 2016, the Panel informed the Mission that this case had been registered.
3. On 28 June 2017, the Panel requested the complainant to provide additional information regarding her complaints. On 20 September and 17 October 2017, the Panel sent two further requests for additional information. The Panel did not receive any response in relation to this case.

4. 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.
5. By letter of 17 January 2019, the Mission was requested again to provide answers to the questions by 16 February 2019. By letter of 8 April 2019, the Panel again requested the HoM to provide answers to the questions as soon as practical. On 20 June 2019, the complainant was informed that the Panel was still in the process of examining her complaint. The observations of the HoM were eventually received on 30 July 2019, after which they were communicated to the complainant for additional observations.
6. On 5 August 2019, the comments of the Acting HoM were forwarded to the complainant, and she was asked to submit her comments, if any, no later than 6 September 2019. She did not avail herself of that opportunity.
7. On 11 December 2019, the Panel found this case to be admissible (<https://hrrp.eu/docs/decisions/2019-12-11%20Admissibility%20Decision%202016-17.pdf>) with regard to alleged violations of Articles 2, 3, 8 and 13 of the European Convention on Human Rights ('European Convention').
8. On 4 June 2020, the Panel issued its Decision and Findings in relation to the merit of the case (<https://hrrp.eu/docs/decisions/2020-06-04%20Decision%20and%20Findings%202016-17%20signed.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:
 - i. Acknowledge the violation of the complaint's rights by the Mission;
 - ii. 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;
 - iii. Order that this case be monitored by the competent organs of the Mission;
 - iv. Query with the competent local authorities what steps, if any, have been taken to investigate this case and what future steps are being planned;
 - v. Reach out to the complainant with a view to finding a way to remedy the violation of her rights.
9. By letter of 30 October 2020, the Head of Mission informed the Panel of the measures taken in response to the Panel's recommendations.
10. 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. SUMMARY OF RELEVANT FACTS

11. The facts, as they appeared from the complaint, may be summarized as follows.
12. On 19 June 1999, at about 07.30 hours, the complainant's husband, Milorad Avramović, was abducted with four other men and a woman at St. Starca Vujadina 3/1, Tamnic,

Mitrovica. At the time of his abduction, he was in the process of helping the above-mentioned woman to move house by truck from south Mitrovica to north Mitrovica. He was never seen again and his whereabouts remain unknown.

13. This case came under the responsibility and competence of EULEX Kosovo all through the relevant period, although the Mission failed to investigate it and failed to provide any information to the relatives of the missing person.

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

14. The Panel's first recommendation was for the Head of Mission to acknowledge the violation of the complainant's rights by the Mission. The Head of Mission failed to address this recommendation. The Panel will, therefore, renew its request that it 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 amend' for its serious failure to comply with its basic human rights obligations in this case.

15. 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;

16. 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)'.

17. 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'. 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.

18. 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.

19. In response, the Head of Mission gave a lengthy description of the Mission's current monitoring mandate. In summary, the Head of Mission indicated that the Mission would only monitor the case if local authorities decide to open and investigate this case. 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 to accelerate the review and processing of the present case.

20. The Panel further considers that the proposed approach is unsatisfactory and does not provide an adequate remedy for the violation of fundamental human rights attributed to the Mission. 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. Doing so would in effect render the Mission un-accountable *despite the Panel's existence*.
21. The Panel therefore invites the Head of Mission to consider what steps could be taken, if any, to see to it that cases involving grave violation 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. 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.
22. 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. The Head of Mission does not address this recommendation. Instead, a generic description of the Mission's monitoring activities is laid out. 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.
23. The Panel's last recommendation was for the Mission to '[r]each out to the complainant with a view to finding a way to remedy the violation of her rights'. While the Head of Mission expressed his 'deepest sympathy' to the complainant, there is no indication that he took steps to reach out to the complainant. The Panel asks the Head of Mission to clarify whether this was done and, if not, why.
24. 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 followed and implemented some but not all of the Panel's recommendations;

FINDS 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;

REGRETS the Mission's failure to acknowledge the violation of the complainant's right and to offer to remedy it;

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 clarify whether, as recommended, the Mission reached out to the complainant with a view to finding a way to remedy the violation of her rights and, if not, why;

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;

INVITES the Head of Mission to address the Panel’s requests by 28 February 2021.

For the Panel,

Guénaël METTRAUX
Presiding Member

Anna BEDNAREK
Member

Anna AUTIO
Member