



**DECISION ON THE IMPLEMENTATION OF
THE PANEL'S RECOMMENDATIONS**

Date of adoption: 29 April 2021

Case No. 2019-01

G.T.

Against

EULEX

The Human Rights Review Panel ("the Panel"), sitting on 29 April 2021 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Mr Petko PETKOV, Substitute Member
Ms Anna AUTIO, Member

Assisted by
Mr Ron 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 was registered on 1 August 2019.
2. The complainant requested not to have her identity disclosed. Having considered the matter, in particular the circumstances of the case, the Panel was satisfied that the request should be granted.
3. By letter of 5 August 2019, the Panel informed the European Union Rule of Law Mission in Kosovo, EULEX Kosovo ("the Mission") that this case had been registered with the Panel.

4. On 16 October 2019, the Panel requested the complainant to provide additional information regarding the complaint.
5. On 29 October 2019, the complainant submitted additional information.
6. On 26 November 2019, the Panel transmitted a Statement of Claims and Questions to the Mission, inviting written answers and observations on the complaint no later than 26 January 2020.
7. The Panel received the observations of the Head of Mission on 18 February 2020.
8. By letter of 19 February 2020, the complainant was invited to reply to the Mission's submissions if she wished to do so.
9. On 12 March 2020, the complainant submitted her observations on the Mission's submissions.
10. On 4 June 2020, the Panel declared the complaint admissible with regard to alleged violations of Articles 3 (freedom from torture, inhuman or degrading treatment or punishment) and 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights ("the Convention") (<https://hrrp.eu/docs/decisions/2020-06-04%20Admissibility%20Decision%202019-01%20signed.pdf>).
11. On 3 August 2020, the Panel received the complainant's submissions on the merits.
12. On 7 August 2020, the Panel transmitted these to the Mission for information.
13. On 1 October 2020, the Panel received the Mission's submissions on the merits.
14. On 28 October 2020, the Panel transmitted these to the complainant for information.
15. On 11 December 2020, the Panel issued its Decision and Findings in relation to the merit of the case ([2020-12-11 Decision and Findings 2019-01-signed.pdf \(hrrp.eu\)](https://hrrp.eu/docs/decisions/2020-12-11%20Decision%20and%20Findings%202019-01-signed.pdf)). In that Decision, the Panel found that the Mission had violated the complainant's right under Article 3 of the Convention to a limited extent, as described in that Decision. The Panel also invited the Mission to consider the following recommendations:
 - i. Acknowledge that its conduct contributed to the violation of the rights of the complainant; and
 - ii. Contact the complainant and local authorities to establish the need for additional security arising from the complainant's testimony in Serbia.

The Panel also asked the HoM to circulate its Decision to relevant officials of the Mission and authorities outside of it.

16. In the aforementioned Decision, the Panel asked the Mission to report back on the implementation of the recommendation no later than 28 February 2021.
17. By letter of 29 March 2021, the Mission informed the Panel of the measures taken in response to the Panel's recommendations.
18. In accordance with Rule 45 *bis* of its Rules of Procedure, the Panel will consider the Mission's submissions regarding its implementation of the Panel's recommendations.

II. THE FACTS

19. The facts of the case as they appeared from the parties' submissions may be summarized as follows:
20. The complainant received a summons from a court in Kosovo to appear as a witness at a criminal hearing taking place sometime in 2019 before a court in the Republic of Serbia (hereafter "Serbia"). These criminal proceedings concerned serious crimes allegedly committed during the conflict in Kosovo in 1998-99. The complainant had previously provided witness statements, including to the Mission, with regard to the same events.
21. Sometime after the complainant had received the summons and before the scheduled date of the hearing, the Mission approached the complainant with regard to the summons and travel from her domicile in Kosovo to Serbia to testify at the hearing.
22. The Mission subsequently organised transportation and accompanied the complainant to Serbia sometime in 2019.
23. The Mission also selected different accommodation in Serbia for the complainant when it found the accommodation provided by the Serbian authorities inadequate. The Mission had brought along an Albanian-speaking doctor as it had deemed this precaution necessary.
24. According to the complainant, she was threatened and intimidated while in Serbia, and subsequently also in her family home in Kosovo, as a result of her testimony in Serbia. The complainant suffers from trauma as a result of the intimidation.
25. The Panel highlights that when making the finding of a violation of the complainant's rights by the Mission under Article 3 of the Convention, the Panel noted that the Mission's contribution to the harm suffered by the complainant was partial, taking into account the pre-existing vulnerability of the complainant, yet serious in light of the Mission's rule of law mandate and the trust placed by the complainant therein. In concluding that this harm met the threshold of severity of suffering required under Article 3, the Panel noted the following considerations and circumstances:
 - i. The trauma and fear of the victim was real and genuine;
 - ii. The vulnerability of the complainant as a witness to and a victim of serious crimes;
 - iii. The fear and concern – known to the Mission – that she felt having to testify about those crimes and, more, to do so in Serbia;
 - iv. The lack of clarity and transparency regarding the distribution of responsibility for the security and well-being of the complainant while in Serbia;
 - v. The failure of the Mission to carry out a risk assessment or/and to ensure that one had been carried out by local authorities;
 - vi. The failure of the Mission to diligently investigate a) claims of threats in Serbia and b) claims of threats in Kosovo;
 - vii. The failure of the Mission to fully engage with the concerns of the complainant and to leave her, instead, having seek redress and protection on her own. (See 2019-01, *G.T. Against EULEX*, 11 December 2020, paras 85-86).

III. FOLLOW-UP EVALUATION BY THE PANEL PURSUANT TO RULE 45 *BIS*

26. The Panel's first recommendation was for the Mission to acknowledge that its conduct contributed to the violation of the rights of the complainant.
27. The Mission has failed to address this recommendation.
28. The Panel will, therefore, reiterate its recommendation that the Mission should acknowledge the contribution of its conduct to the violation of the complainant's rights. The Panel has highlighted in a number of decisions that an acknowledgment of a human rights violation can be an important and meaningful measure for the complainant. It is also a way for the Mission to 'make amend', in part, for its failure to respect and protect the complainant's human rights.
29. The Panel's second recommendation was for the Mission to contact the complainant and local authorities to establish the need for additional security arising from the complainant's testimony in Serbia.
30. The Mission informs the Panel that, in line with the Panel's recommendations, it had in February 2021 met with the Kosovo Police informing them of the complaint and of the concerns of the complainant. The Mission states that it received assurances that the complainant's concerns would be addressed as soon as possible. The Mission states that later that month it was informed that Kosovo Police had visited the complainant at her home address and

'provided assurances that any threats that she would report to them in future would be duly investigated and that any concerns for her safety would be properly addressed. [The complainant] received clear information on how and whom to contact in the Kosovo police'.

The Mission states that in March 2021 it paid a second visit to Kosovo Police to confirm the information received over the phone.

31. With regard to the implementation of the second recommendation, the Panel takes note of, and commends the Mission for the steps taken with regard to liaising with the Kosovo Police on the security concerns of the complainant. The Panel nevertheless notes that the Mission appears to have failed to contact the complainant directly to seek her views on the need for additional security. The Panel highlights that it was the Mission that proactively approached the complainant in 2019 with regard to her travelling to Serbia to provide testimony. The Mission thereafter accompanied the complainant to Serbia and was, per the Panel's finding, responsible for her security within the boundaries of Kosovo. The Panel regrets that the Mission would not now reach out to the complainant to follow up on the security concerns that its own conduct partially contributed to.
32. In light of the above, the Panel finds that the Mission has only partially implemented the Panel's second recommendation, and invites the Mission to contact the complainant directly, to establish the need for additional security arising from her testimony in Serbia.
33. The Panel also asked the Mission to circulate the present Decision to relevant officials of the Mission and authorities outside of it.
34. The Mission states that all of the Panel's decisions 'are circulated promptly to relevant units of the Mission, and in line with OPLAN, they are transmitted by EULEX to the Civilian Operations Commander within the Civilian Planning and Conduct Capability'.

35. The Panel takes note of the Mission's statement and finds that it has complied with the Panel's request in this regard.

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 complainant'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;

FINDS that the Mission has failed to contact the complainant directly with regard to establishing the need for additional security arising from the complainant's testimony in Serbia, and **INVITES** the Mission to do so;

REGRETS the Mission's failure to contact the complainant directly following the issuance of the Panel's recommendations;

ASKS THE MISSION to circulate the present Decision to relevant officials of the Mission and authorities outside of it;

REMAINS SEIZED of the case until further notice;

FINALLY, THE PANEL NOTES that the responsibility to provide an effective remedy for violations of rights committed by the Mission is and remains firmly with the Mission itself. To the extent that the Mission, through the Head of Mission, is unable or unwilling to fully and completely adopt the remedial recommendations of the Panel, it remains its responsibility to find alternative means and methods of relief that provide an effective remedy for the violations that it is found to have committed;

INVITES the Head of Mission to address the Panel's requests by 20 August 2021.

For the Panel,

Guénaél METTRAUX
Presiding Member

Petko PETKOV
Substitute Member

Anna AUTIO
Member