



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

Date of adoption: 16 September 2021

Case No. 2019-01

G.T.

Against

EULEX

The Human Rights Review Panel ("the Panel"), sitting on 16 September 2021 with the following members present:

Ms Anna AUTIO, Presiding Member
Mr Alexander FASSIHI, 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. On 29 April 2021, the Panel issued its Decision on the implementation of the Panel’s recommendations. In that Decision, the Panel found that the Mission had implemented some but not all of the Panel’s recommendations. In particular, the Panel found that:

- i. the Mission had failed to acknowledge the violation of the complainant's rights by the Mission, and invited him again to issue such an acknowledgment; and,
- ii. the Mission had failed to contact the complainant directly with regard to establishing the need for additional security arising from the complainant's testimony in Serbia, and invited the Mission to do so.

The Panel further noted 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 is unable or unwilling to fully and completely adopt the remedial recommendations of the Panel, the Panel noted that it remains the responsibility of the Mission to find alternative means and methods of relief that provide an effective remedy for the violations that it is found to have committed

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

17. In the aforementioned Decision, the Panel asked the Mission to report back on the implementation of the recommendations no later than 20 August 2021.
18. By letter of 19 August 2021, the Mission informed the Panel of the measures taken in response to the Panel's recommendations.
19. In accordance with Rule 45 *bis* of its Rules of Procedure, the Panel will consider, in this second follow-up decision, the Mission's submissions regarding its implementation of the Panel's recommendations.

II. COMPOSITION OF THE PANEL

20. Following the recent resignations of two Panel Members, the Panel will sit in this matter with only two members in accordance with Rule 14 of the Panel's Rules of Procedure.
21. The departing Member of the Panel who was a staff member of the Mission was replaced by Mr. Fassihi upon his appointment to the Panel. In order to ensure full familiarity with the case, Mr. Fassihi acquainted himself with the full record of the case, and is therefore fully able to participate in the deliberations of this case.

III. THE FACTS

22. The facts of the case as they appeared from the parties' submissions may be summarized as follows:
23. 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.
24. 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.

25. The Mission subsequently organised transportation and accompanied the complainant to Serbia sometime in 2019.
26. 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.
27. 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.
28. 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 limited, 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).

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

29. The Panel's first recommendation was for the Mission to acknowledge that its conduct contributed to the violation of the rights of the complainant.
30. The Mission responded that it opines that it did not violate the complainant's rights and is therefore not prepared to acknowledge that any such violation occurred.
31. The Panel regrets that the Mission has failed to implement the Panel's recommendation. The Panel refers to its finding of a violation of the complainant's rights by the Mission under Article 3 of the Convention. The purpose of the Panel's follow-up evaluation is to assess the implementation by the Mission of the Panel's recommendations, not to again examine whether or not the Mission committed a violation. The Panel found in its earlier Decision that the Mission did commit a violation.
32. In light of the above, the Mission has failed to provide cogent arguments as to its failure to implement the recommendation. The Panel notes that while its recommendations

are not legally binding, it is essential to the credibility and legitimacy of the Mission – a rule of law mission – that it should decisively and credibly demonstrate its commitment to the effective enforcement of human rights by ensuring that its actions are at all times consistent with international human rights standards – and that it is accountable where it has fallen short of those standards. 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. Regrettably the Mission has declined to do so.

33. The Panel’s second recommendation was for the Mission to contact the complainant to establish the need for additional security arising from the complainant’s testimony in Serbia.
34. The Mission states that it has no mandate to undertake this action. The Mission further states that “[t]he security of the complainant is a matter under the authority of the Kosovo institutions, not EULEX Kosovo and the Mission brought the present case to the attention of the Kosovo Police already in February this year as already communicated. Additionally and as an alternative to the course of action proposed by the Panel, the Mission also brought the case and the Panel’s decision to the attention of the Kosovo prosecution authorities competent for war crimes”.
35. With regard to this submission by the Mission, the Panel again 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 Mission has not provided a cogent explanation as to why it was, in its view, permissible for the Mission under its mandate to contact proactively the complainant on a number of occasions in 2019, and why it could not contact the complainant later under that same mandate. The Panel does not agree with the statement that the Mission has no mandate to contact the complainant and 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.
36. As for the Mission’s submission that it brought the case and the Panel’s Decision to the attention of the relevant authorities as an alternative action, the Panel notes the following. First, circulating the decision to relevant authorities was a *separate* recommendation by the Panel in its Decision of 29 April 2021, not an *alternative* recommendation to contacting the complainant directly. Second, the Mission is responsible for its own obligations under international human rights law, including providing remedy for violations. It cannot delegate its human rights responsibilities to third parties, such as the Kosovo authorities.
37. The Panel also asked that the Mission circulate the Decision of 29 April 2021 to relevant officials of the Mission and authorities outside of it.
38. The Mission states that it brought the Panel’s Decision to the attention of the Kosovo prosecution authorities. The Panel takes note of this valuable step. The Mission does not specifically address the question of whether it circulated the Decision to other relevant authorities and within the Mission. The Panel therefore notes that the Mission has in part implemented this recommendation.

39. The Panel regrets that the Mission has again failed to implement the Panel's recommendations in full, in particular that the Mission has failed to contact the complainant and that it has not provided a cogent explanation as to its failure to do so.
40. The Panel regrets the Mission's continued disregard for its human rights obligations in this case. The Panel sees no reason to keep repeating its recommendations where the Mission shows disregard for its human rights obligations by repeatedly failing to implement those recommendations. Instead, the Panel reiterates that the responsibility to provide an effective remedy for violations of rights committed by the Mission is and remains firmly with the Mission itself and cannot be delegated to third parties. This responsibility remains even where the Panel decides to close its examination of a case.
41. Therefore, even where the Mission is unable or unwilling to implement the Panel's recommendations in full, such as in the present case, it remains the Mission's responsibility to provide the complainant with an effective remedy for the violation that it is found to have committed, through the recommended or adequate alternative means of relief.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

DECLARES that the Mission has not fully implemented the Panel's recommendations;

REGRETS the Mission's failure to implement the Panel's recommendations;

REITERATES that the Mission is responsible for providing an effective remedy for the human rights violation it has committed in the present case, and that the Mission cannot delegate its human rights obligations to third parties;

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

DECIDES to close the examination of the case.

For the Panel,

Anna AUTIO
Presiding Member

Alexander FASSIHI
Member