



SECOND DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 07 March 2017

Case no. 2014-32

L.O.

Against

EULEX

The Human Rights Review Panel, sitting on 07 March 2016,
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Elka ERMENKOVA, Member

Assisted by
Mr John RYAN, Senior Legal Officer
Ms Noora AARNIO, 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 2013,

Having deliberated, decides as follows:

I. DECISIONS OF THE PANEL OF 11 NOVEMBER 2015 AND 19 OCTOBER 2016

1. On 11 November 2015, the Panel rendered its decision in relation to the complaint filed by L.O. against EULEX and made a number of recommendations to the Head of Mission (HoM) in accordance with Rule 34 of the Rules of Procedure. The decision read as follows:

" The Panel, unanimously

DECLARES THE COMPLAINTS WITH REGARD TO ARTICLES 2 AND 3 (PROCEDURAL LIMBS) AND ARTICLES 8 AND 13 OF THE CONVENTION ADMISSIBLE,

FINDS A VIOLATION OF THOSE RIGHTS, and

DECLARES that in the light of its above findings of fact and law the Panel finds it appropriate to make recommendations to the H[ead] of] M[ission], and

RECOMMENDS THE FOLLOWING REMEDIAL ACTION

- a. The HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant's rights attributable to the acts [and /or omissions] of EULEX in the performance of its executive mandate;
- b. The HoM should instruct all organs of the Mission who are in contact with alleged victims of rights violation (or their close relatives) to ensure that in all communications with them, they communicate with the necessary amount of expeditiousness, diligence and care necessary to account for the emotional distress of their interlocutor. If necessary, the HoM should consider adopting guidelines laying down in more details what this general instruction might imply in concrete circumstances.
- c. The HoM should ensure that all investigative bodies within the Mission (the SITF and the EULEX Prosecutors) have at their disposal the necessary resources and support to accomplish their mission effectively and in a manner consistent with the effective protection of human rights of all those involved. For that purpose, and if considered necessary, the HoM should request additional resources for these organs so that they may perform their functions promptly, diligently and effectively in all cases.
- d. The HoM should seek to clarify the relationship between the Mission and the SITF with a view to ensure the effective protection of rights and guarantee that whichever entity is in charge of the matter provides adequate and sufficient information to the complainant. If necessary, authorisation should be sought from the EU to make public the legal basis regulating the work of the SITF. This would also greatly contribute to bringing increased transparency and accountability to this mechanism.
- e. The HoM should impress upon the SITF and the States supporting its activities the importance of such cases being fully and effectively investigated and that wherever suspects are identified that they are being brought to justice promptly and fairly.
- f. The HoM should impress upon the competent officials of the SITF the importance and necessity to inform victims of the general aspects of their

investigation so as to make them aware of their efforts and commitment to obtaining justice on their behalf.”

2. By letter of 29 April 2016, the outgoing Head of Mission, Gabriele Meucci addressed the recommendations of the Panel.
3. In a Decision of 19 October 2016, the Panel determined that it was not satisfied that the HoM had thus far adequately and effectively addressed the recommendations of the Panel. The Panel invited the HoM to reconsider its position regarding the Panel’s recommendations.
4. The present Decision constitutes a follow-up to the Panel’s decisions of 11 November 2015 and 19 October 2016 and to the recommendations made therein.
5. The power and authority of the Panel to follow-up on its decisions and recommendations is provided for in Rule 45 *bis* of the Panel’s Rules of Procedure (see, e.g., the decisions on the implementation of recommendations *Desanka and Goran Stanisić against EULEX*, 2012-22, 29 February 2016, § 3; *X and 115 other complainants against EULEX*, 2011-20, 11 November 2015, § 3).

II. INFORMATION RECEIVED FROM THE HEAD OF MISSION OF EULEX REGARDING THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE PANEL

6. Pursuant to the Panel’s Decision of 19 October 2016, by letter of 8 December 2016, the HoM provided further information regarding the implementation of the Panel’s recommendations.

III. EVALUATION BY THE PANEL

7. The Panel notes with satisfaction that the HoM accepted the Panel’s invitation to reconsider the position taken by her predecessor in regard to this case.
8. Regarding the Panel’s recommendation that the HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant’s rights attributable to the acts and /or omissions of EULEX in the performance of its executive mandate (see, para. 1(a) above), the HoM said the following:

“In regards to the first recommendation of the Panel, I have carefully considered the content of the Panel’s latest decision and its reasoning. However, I reiterate the Mission’s policy not to expressly acknowledge to complainants that EULEX was violated his/her human rights. I would also like to inform the Panel that with the transitioning of the Special

Investigative Task Force (“SITF”) structures into the Specialist Prosecutor’s Office (“SPO”), the investigation of this case now falls under the SPO, which is fully independent from the EULEX structures, having been set up by Law No 05/L-053 adopted by the Kosovo Assembly on the 3 August 2015.”

9. The Panel notes with regret that it has been the consistent practice of the Mission to refuse or fail to formally acknowledge responsibility for a violation of the complainant’s human rights where the Panel has determined that this had occurred. Such an acknowledgment would provide an important form of just satisfaction in a case like the present one to remedy the wrong done to the complainant by the Mission. This form of relief is all the more important in the present context since the Panel is not permitted to recommend any sort of monetary reparation to compensate for the prejudice caused to the complainant.
10. In its second recommendation (see para. 1(b) above), the Panel had recommended that the HoM should instruct all organs of the Mission who are in contact with alleged victims of rights violation (or their close relatives) to ensure that in all communications with them, they communicate with the necessary amount of expeditiousness, diligence and care necessary to account for the emotional distress of their interlocutor. If necessary, it was also recommended that the HoM should consider adopting guidelines laying down in more details what this general instruction might imply in concrete circumstances.
11. In response, the HoM said the following in her letter of 8 December 2016:

“...EULEX has given due consideration to the Panel’s decision and its reasoning. I have approved the establishment of a Human Rights Focal Point Network to ensure human rights compliance by the Divisions. An internal review of the procedures and guidelines currently in place will be part of this process. I will inform the Panel of the results of the internal review. However, issuance of guidelines related to the SPO is outside of my remit. Please not[e] that it is expected that the Specialist Chamber (“SC”) and SPO will issue their own internal Rules of Procedure once the Court is fully established.”
12. The Panel notes with satisfaction the initiative of the HoM to create a Human Rights Focal Point Network to ensure human rights compliance by the Divisions. Such a measure is likely to help guaranteeing a common approach throughout the Mission of basic standards of human rights and to ensure adequate coordination between Divisions in relation to this matter.
13. Regarding the remainder of the Panel’s recommendations (see paras. 1(c)-(f)), the HoM said the following:

“...I refer you to the response from my predecessor of 29 April 2016, and see no reason to depart from the view expressed therein. This is supported by the Council Joint Action 2008/124/CFSP as amended by

the Council Decision 2014/685/CFSP of 19 September 2014 and Council Decision 2016/947/CFSP of 14 June 2016, which stipulate that EULEX shall *support* relocated judicial proceedings within the member states. However, the Member States approved the establishment of a SC and SPO that is fully independent from EULEX. Law No. 05/L-053 adopted by the Kosovo Assembly on the 3 August 2015, stipulates that SPO will take over the mandate and personnel of the SITF, and “shall be an independent office for the investigation and prosecution of crimes within the jurisdiction of the Specialist Chambers”. In addition, Member States decided that the SC and SPO shall be accountable to a separate Ombudsperson, and specifically exclude both the SC and SPO from the jurisdiction of the Panel. No pressure can therefore be exercised on SPO and SC by EULEX as suggested by the recommendation. I am therefore not able to implement the Panel’s recommendations.”

14. The Panel takes notice of the HoM’s view that she is not competent and has no authority to raise and address the Panel’s recommendations with SITF, SC/SPO or the States supporting the new institution.
15. Based on the above considerations, the Panel is satisfied that the HoM has given due and proper consideration to its recommendations and has provided an adequate response to the majority of those recommendations.

THE PANEL THEREFORE UNANIMOUSLY

Declares that the HoM has implemented its recommendations in this case in part only,

Welcomes the HoM’s indication that she would advise the Panel of the result of the internal review and looks forward to receiving that information,

Decides to close the examination of this case.

For the Panel,

John RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member