



ADMISSIBILITY DECISION

Date of adoption: 5 October 2012

Case No. 2011-07

W

Against

EULEX

The Human Rights Review Panel sitting on 5 October 2012 with the following members present:

Ms. Magda MIERZEWSKA, Presiding Member
Ms. Verginia MICHEVA-RUSEVA, Member
Mr. Guénaël METTRAUX, Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Joanna MARSZALIK, Legal Officer
Mr. Florian RAZESBERGER, 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 of 9 June 2010,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 11 April 2011. On 25 November 2011 the Panel requested additional information from the Head of Mission (HoM) of EULEX Kosovo. The information was received on 19 January 2012.
2. On 20 March 2012 the Panel decided to give notice of the complaint to the HoM, inviting him to submit written observations on the

complaint. The observations of the HoM were received on 4 May 2012 after which they were translated and communicated to the complainant for his additional observations.

3. On 16 June 2012 the complainant met with the Panel Secretariat and presented his additional observations orally.
4. No further observations were requested.
5. With a view to protecting the safety, privacy and identity of the complainant, the Panel has decided, *proprio motu*, to delete the name of the complainant from the present decision. He will be referred to as W.

II. THE FACTS

6. The facts of the case, as submitted by the parties, and as apparent from documents available to the Panel, may be summarized as follows:

Background

7. According to the complainant, he and several other villagers were witnesses to the killing of 109 civilians by Serbian forces in the course of three separate incidents in the village of Lubeniq in Pejë/Peć area between May 1998 and April 1999.

Investigation by EULEX

8. The complainant and a number of other persons met with the EULEX War Crimes Investigation Unit Team Leader (hereafter EULEX investigator) for the first time in May 2010 in regard to the investigation of those incidents. Several subsequent meetings followed, some with EULEX War Crimes Investigation Unit and others with the Kosovo Special Prosecution Office (SPRK).
9. In this context, the complainant and others gave a number of statements to EULEX investigators. The complainant gave his initial statement on 20 July 2007 and a further, expanded, statement on 27 July 2010.
10. During a subsequent meeting with EULEX investigators, individuals who had given statements in relation to those events were reportedly told by EULEX investigators that the investigation by EULEX would be completed shortly and that the prosecution of the case could be taken over by the Serbian authorities. The witnesses objected to such a course of action and requested that the investigation be carried out by EULEX. There is no indication of the response, if any, by the EULEX investigator to these objections.

11. Throughout the investigation with EULEX investigators and prosecutors, the complainant and the other witnesses expressed their willingness to cooperate with EULEX. However, they refused to allow their statements to be sent to Serbian authorities because of concerns associated to their safety or that of their families.
12. On 30 March 2011, five individuals who had given statements to EULEX sought to withdraw their statements. In their request to that effect, they expressed mistrust of EULEX as it was cooperating with Serbian authorities. The complainant was not listed amongst those five persons.
13. In October 2011, the same individuals who had requested the withdrawal of their statements were contacted by EULEX. They referred EULEX to the complainant. A meeting was to be held in October 2011 between EULEX and the complainant, but it did not take place. The reasons for this have not been elucidated.
14. The complainant contacted the Ombudsperson Institution of Kosovo about EULEX sending his statements to the Serbian authorities. In his request to the Ombudsperson, the complainant indicated that EULEX had initially undertaken that this case would proceed in Kosovo before being informed *post factum* that his statements had been communicated to the Serbian authorities.

Additional information received from EULEX

15. The Panel received contradictory information from EULEX regarding the nature of the investigation into this case. In the initial response received on 17 January 2012, the Panel was informed that the investigation was a "joint" investigation between EULEX and the Serbian authorities. That information was later retracted and the Panel was informed, instead, that there were two investigations (an EULEX investigation and a Serbian investigation) and *informal* cooperation between EULEX and the Serbian authorities in relation to this case.

III. COMPLAINTS

16. The complainant claims that EULEX violated his rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) by sending his statements, against his will, to the Serbian authorities. He states that he feels threatened as his name has been revealed to Serbian authorities, which he does not trust.
17. Whilst the complainant did not specifically identify the rights of the Convention which he claims were violated by EULEX, it is clear from the content of his application that his complaint pertains to the following protected rights:
 - The right to life, guaranteed, *inter alia*, by Article 2 of the Convention;

- The rights not to be subjected to torture, inhuman or degrading treatment guaranteed, *inter alia*, by Article 3 of the Convention; and
- The right to respect for private and family life guaranteed, *inter alia*, by Article 8 of the Convention.

IV. THE LAW

General remarks

18. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
19. The Panel can only examine complaints relating to human rights violations attributable to EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors as outlined in Rule 25, paragraph 1 of its Rules of Procedure.
20. In the present case, the complainant was interviewed as a potential witness by EULEX in relation to a case involving the alleged mass killing of civilians in Kosovo. The complainant is a resident of Kosovo and suspects are believed to reside in Serbia.
21. The Panel has already established that the actions of EULEX prosecutors or the police taken while examining a case are part of the executive mandate of the EULEX Kosovo and therefore fall within the ambit of the Panel's mandate (see, for instance, *Latif Fanaj against EULEX*, no. 2010-06, decision of 14 September 2011; *S.M. against EULEX*, no. 2011-11, decision of 23 November 2011; *Hoxha against EULEX*, no. 2011-18, decision of 23 November 2011; *Thaqi v EULEX*, no. 2010-02, decision of 14 September 2011).

Alleged violation of Articles 2, 3 and 8 of the Convention

22. The complainant claims that his rights under the Convention have been violated because information he provided to EULEX were transferred to the Serbian authorities against his will and express opposition. He does not allege any specific threat to himself or his family, but submits that the disclosure of that information to the Serbian authorities could create serious risks for him and his family. It follows that the complaint falls to be examined under Articles 2, 3 and 8 of the Convention.
23. The relevant provisions of the Convention read as follows:

Article 2 Right to life

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 3 Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 8 Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

a. Submissions by the parties

24. In his submissions, the HoM submitted that the disclosure of the complainant's statements to the Serbian Prosecutor Office was not done against the will of the complainant as he was said to have been informed about it and was said not to have raised any objection to it. According to the HoM, the complainant was also informed of the possibility that the trial might be held in Serbia, since some of the suspects had already been arrested in Serbia. No written records of relevant documents were produced.
25. Further, the HoM maintained that the SPRK was cooperating with their Serbian counterparts with regard to ongoing investigations on a regular basis, in particular with regard to exchanges of information.
26. In reply to the HoM's observations, the complainant re-iterated his previous complaints. He maintained that, when giving his statement to EULEX investigators, he was not informed that this information might be shared with the Serbian authorities and that he continued to insist that this information should not be shared with those authorities. He expressed fears for his security and that of his family.
27. The complainant maintained that the case should be investigated by EULEX and, subsequently, by Kosovo authorities. He reiterated the fact that he and other witnesses were still ready to cooperate with EULEX investigators. However, they had objections to Serbian authorities conducting the investigation, as he did not trust them.
28. There is no written record that, prior to disclosing his statements to the Serbian authorities, EULEX had informed the complainant that this would be done. The record insofar as available to the Panel suggests that the complainant was only notified of that fact *after* his statements had been communicated to the Serbian authorities.

b. The Panel's assessment

29. The Panel considers that, in the light of the parties' submissions, the complaint raises serious issues of fact and law under Articles 3 and 8 of the Convention, the determination of which requires an examination of the merits. The Panel concludes therefore that this complaint is not manifestly ill-founded. No other ground for declaring it inadmissible has been established.
30. Evidence presented to the Panel is insufficient to conclude that the life of the complainant or that of his relatives was put at risk as a result of conduct attributable to EULEX. This part of the complaint, which pertains to an alleged violation of Article 2 of the Convention by EULEX, is therefore manifestly ill-founded and inadmissible as such.

FOR THESE REASONS,
The Panel, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the complaints with regard to alleged violations of Articles 3 and 8 of the Convention;

DECLARES THE REMAINDER OF THE COMPLAINT INADMISSIBLE;

PROPOSES TO THE HEAD OF MISSION THAT THE FOLLOWING INTERIM MEASURES BE TAKEN PURSUANT TO RULE 22 OF THE PANEL'S RULES OF PROCEDURE:

1. EULEX Prosecutors in charge of this case should be invited to request their Serbian counterparts to return copies of any document provided to them which bears the name or refers to the complainant. This would include the two statements given by the complainant to EULEX.
2. EULEX Prosecutors in charge of the case should be invited to request their Serbian counterparts –
 - i. To destroy any copy made of the above-mentioned documents and to redact the name and any information in other documents that could identify the complainant; and
 - ii. To give notice to EULEX Prosecutors that this has been done, and
 - iii. To not disclose to any suspect or defendant any information provided by the complainant to EULEX.

INVITES the Head of Mission to make any further submissions on the merits of the case should he wish to do so.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member