



## **INADMISSIBILITY DECISION**

**Date of adoption:** 8 June 2011

**Case No.** 2010-09

**Burim Ramadani**

Against

**EULEX - Justice component**

The Human Rights Review Panel sitting on 08 June 2011  
with the following members present:

Mr. Antonio BALSAMO, Presiding Member  
Ms. Magda MIERZEWSKA, member  
Ms. Anna BEDNAREK, member

Assisted by  
Mr. John J. RYAN, Senior Legal Officer  
Ms. Leena LEIKAS, Legal Officer  
Ms. Stephanie SELG, 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 10 September 2010.

## II. THE FACTS

### *Background*

2. On 20 August 2001 five members of the Hajra family were shot dead in their car in an ambush near Glogovac/Glogoc. One family member survived the attack. Hamez Hajra, the father of the family, had been attacked previously in the spring, 1998.

### *Criminal proceedings in first and second instance*

3. On 3 July 2002 and 11 September 2002, a prosecutor filed charges against two suspects in relation to the attempted murder that took place in 1998.
4. On 7 February 2003 seven suspects were charged with the murders as well as attempted murder in 2001, amongst other crimes. Four other persons were charged with acts connected to the murders, such as aiding and abetting in various ways.
5. 16 September 2003 all the indictments were consolidated and the proceedings were joined with regard 1998 and 2001 against a total of 12 suspects.
6. On 7 October 2003 the Special Representative of Secretary General of the UN (SRSG), decided to change the venue of the trial from Prishtinë/Priština District Court to Gjilan/Gnjilane District Court.
7. The trial commenced on 4 November 2003 in Gjilan/Gnjilane District Court and a total of 107 hearings took place during the trial.
8. On 7 April 2005 the District Court of Gjilan/Gnjilane convicted all the 12 suspects and sentenced them to prison terms ranging from 2 years to 30 years. Some charges were dismissed in the process.
9. On 20 May 2008 the Supreme Court of Kosovo, having held a session on the same date, acquitted some of the defendants of some charges and other defendants of all the charges. Some sentences were also slightly modified. The panel was composed of three international judges.

### *Appeal proceedings before Supreme Court*

10. The counsels for four of the defendants appealed to the Supreme Court in August and September 2008 claiming procedural violations, incomplete determination of facts, violations of legislation and the excessive length of the prison sentences.
11. The case was handed over from UNMIK to EULEX in January 2009. The Supreme Court of Kosovo held an appeal session in September 2009 with three international judges and two local judges in the panel.

12. On 16 September 2009 the Supreme Court of Kosovo rejected the appeals of three defendants as not grounded and dismissed the appeal of the fourth defendant as inadmissible.
13. At the same time, the Supreme Court of Kosovo fully affirmed its earlier decision, which had sentenced the three main defendants to 30 years each in prison and the fourth one to a term of 11 years imprisonment.
14. There was no appeal possible to this judgment. The only possibility to challenge the judgment was a request for the protection of legality, which was to be filed with the court which rendered the decision in the first instance, within 3 months of the service of the final decision.

*Request for protection of legality*

15. All four defendants filed requests for protection of legality before the District Court of Gjilan/Gnjilane in late 2009 and early 2010. They claimed substantial violations of criminal procedure, inadmissibility of certain evidence and statements and non-compliance of legislation, among other complaints.
16. On 1 February 2011 the Supreme Court, composed of three international judges and two local judges, rejected as unfounded the requests for protection of legality with regard all the three earlier judgments concerning the four defendants.
17. At the same time the Supreme Court reaffirmed the judgment of 20 May 2008, which was earlier affirmed on 16 September 2009 by the Supreme Court as a second instance court.

### **III. COMPLAINTS**

18. The complainant alleges violations of Article 6 of the European Convention on Human Rights and Fundamental Freedoms (ECHR, 1950)
19. In addition, he claims that Articles 29 (right to freedom and security) and 31 (fair trial) of the Kosovo Constitution have been violated.
20. He claims that the panel, with a majority of EULEX judges, did not make its decision based on the law and that the trial was unfair, biased and unprofessional. As a result he claims that the Penal Code of Kosovo was also violated.
21. The complainant requests the Panel to make recommendations to:
  - quash the decision of 16 September 2009 by the Supreme Court of Kosovo and replace it with just and unbiased decision, and to
  - find the material evidence allegedly lost by UNMIK during initial investigation.

#### **IV. THE LAW**

22. 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.
23. The complaint was lodged with the Panel on 10 September 2010 by a journalist Sebahate Shala on behalf of Mr. Burim Ramadani under the auspices of the Organizational Council “Justice for Kicina case”.
24. The decision on the merits in the complainant’s case was taken on 16 September 2009 by the Supreme Court. Subsequently the complainant’s request for protection of legality was found to be ungrounded on 1 February 2011 by the Supreme Court.
25. According to the Rule 25, paragraph 3 of the Rules of Procedure complaints must be submitted to the Panel within six months from the date of the alleged violation. The Panel therefore considers that the complaint which was lodged on 10 September 2010 was lodged in time.
26. According to Rule 25, paragraph 1 of the Rules of Procedure, a complaint to the Panel may be filed by any person other than EULEX Kosovo personnel who claims to be a victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate.
27. The present complaint concerns a request to reverse a final decision of the Supreme Court of Kosovo.
28. The Panel notes that it does not have a mandate to reverse any decision made by a Kosovo court. The Panel is not a court of appeal against the decisions of Kosovo courts. Its mandate does not cover examining errors of fact or law allegedly committed by those courts. It is not the panel’s function to examine the decisions taken by Kosovo courts with regard to admissibility and the assessment of evidence either.

**FOR THESE REASONS,**

The Panel, unanimously, holds that it lacks competence to examine the complaint, finds the complaint manifestly ill-founded within the meaning of Article 29 (d) of its Rules of Procedure, and

**DECLARES THE COMPLAINT INADMISSIBLE.**

For the Panel,

John J. RYAN  
Senior Legal Adviser

Antonio BALSAMO  
Presiding Member