



INADMISSIBILITY DECISION

Date of adoption: 23 November 2011

Case No. 2011-11

S.M.

Against

EULEX

The Human Rights Review Panel sitting on 23 November 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 21 April 2011.
2. The Panel acceded to the complainant's wish not to have his name disclosed.

II. THE FACTS

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

4. The complainant was appointed as a police officer with the Kosovo Police Service in February, 2000. Early in the morning of 23 September, 2009 EULEX police officers entered his home and arrested him. A translator arrived about two (2) hours later and he was then informed that he was being arrested on the basis of allegations that he had committed criminal acts in April 1999. He was then brought to a detention centre in Prishtinë/Priština.
5. According to the complainant's wife and sons who came to visit him on 30 September 2000, EULEX police officers conducted a search of the house and outbuildings over a period of about three (3) hours after he had been arrested and confiscated certain personal possessions and items of his in the process without issuing an inventory of the items taken.
6. About thirty six (36) hours after the complainant's arrest, a pre-trial judge of the Prishtinë/Priština District Court ordered his detention on remand in Gjilan/Gnjilane detention centre for thirty (30) days. This was later extended to a further sixty (60) days, totaling to a ninety (90) day period in detention.
7. He was informed at a subsequent pre-trial hearing, held on an unspecified date, that the investigation was to be extended for an additional six (6) months and he was concurrently released on bail provided that he reported to the Regional Police Station in Gjilan/Gnjilane as specified, that he did not leave his place of residence and that he did not cross the borders of Kosovo.
8. The applicant was acquitted on 22 July 2011.

III. COMPLAINTS

9. The complainant claims that the EULEX police officers and the EULEX prosecutor, respectively, used excessive force; detained him for two months without interrogation and denied him the right to family life and privacy, acted inhumanely; caused serious mental and physical suffering; violated his physical integrity; violated his personal dignity; humiliated him and breached his right to a trial within a reasonable time.
10. He requests the Panel to review the house search and arrest procedure of the EULEX Police and the judicial procedure in the EULEX Court; to examine the alleged violation of his human rights during his arrest and detention, to address the responsibility and accountability of the EULEX Police and the EULEX Judiciary and to recommend compensation for the damage caused to him.

IV. THE LAW

General conditions of procedural admissibility

11. 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 (ROP).
12. The Panel can only examine complaints relating to human rights violations by 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 ROP.
13. According to the said Rule, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot review judicial proceedings before the courts of Kosovo. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by international human rights law applicable in Kosovo.

Alleged excessive length of the criminal proceedings

14. With regard to the alleged excessive length of the criminal proceedings before the Court the present complaint concerns judicial proceedings conducted by the courts in Kosovo. The Panel therefore finds, under Rule 25 of its Rules of Procedure, that it lacks jurisdiction to examine the compatibility of judicial proceedings before the courts of Kosovo with the human rights standards (See also Panel's decision in the case of *SH.P.K "SYRI" v. EULEX*, 2011-05, Decision of 14 September 2011). In any event, the Panel considers that the criminal proceedings against the complainant which were pending before the courts for two years do not appear to raise an issue as to their compatibility with the right to have a case heard within a reasonable time.
15. Contrariwise the Panel notes that the actions or omissions by the prosecutors during the investigative phase of criminal proceedings may not be considered as being made in the context of "judicial proceedings" and that "the actions and omissions of EULEX prosecutors [...] before the filing of indictment may fall within the ambit of the executive mandate of EULEX" (see, HRRP decision *Sadik Thaqi v. EULEX*, 2010-02, Decision of 14 September 2011, Paras. 64 and 93).

Compliance with six-month requirement

16. In accordance with Rule 25, paragraph 3 of the Rules of Procedure¹, complaints must be submitted within three months from the date the Panel may receive complaints (9 June 2010), or within six months

¹ As formulated in the version of 9 June 2010, in force at the time of lodging the current complaint.

from the date of the alleged violation, whichever is more favourable to the Complainant.

17. In relation to the alleged human rights violations caused by the actions taken by the EULEX Police and Judiciary during the arrest of the complainant and the subsequent house search on 23 September 2009, the actions complained of could be said to have fallen fall within the executive mandate of EULEX.
18. None the less, the present complaint was filed with the Panel approximately 19 months later on 21 April 2011. In accordance with Rule 25, paragraph 3 of the Rules of Procedures the complaint should have been lodged latest on 9 September 2010. The complaint with regard to these events therefore does not meet the admissibility criteria set out in Rule 29 of its ROP.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

holds that part of the complaint has been lodged with the Panel outside of the time-limit laid down by its Rules of Procedure and that it lacks competence to examine the remainder of the complaint,

finds the complaint manifestly ill-founded within the meaning of Article 29 (c) and (d) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Senior Legal Officer

Antonio BALSAMO
Presiding Member