



INADMISSIBILITY DECISION

Date of adoption: 23 November 2011

Case No. 2011-13

Mr. Slobodan Martinovic

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.

II. THE FACTS

1. The facts of the case, as submitted by the complainant, and as apparent from documents available to the Panel, may be summarized as follows.
2. According to the complainant, early in the morning of 23 September, 2009, EULEX police officers entered his home and arrested him. He

was asleep at the time and the sound of breaking-in awoke him. The men were shouting at him and his family in a language that he did not understand.

3. Allegedly, the Police officers pointed their weapons at the complainant and his family, including his two grandchildren. After some fifteen (15) minutes an interpreter arrived and explained the arrest warrant to the complainant. He was arrested and brought to a EULEX police station for about ten (10) hours and then taken to a detention centre.
4. After some twenty four (24) hours in detention, on 24 September, 2009, the complainant was ordered by a pre-trial judge to be kept in detention in Prishtinë/Priština for thirty (30) days. His detention was extended for an additional sixty (60) days on 21 October, 2009. His lawyer filed a complaint against the order for detention on 24 October, 2009 but it was dismissed on the ground that he presented a flight risk.
5. After some two (2) months in detention, the complainant was interrogated by a EULEX prosecutor on 2 December, 2009.
6. He was released from detention on 16 December, 2009 and ordered to report to the Regional Police Headquarters in Gjilan/Gnjilane twice a month. He was also forbidden to leave the territory of Kosovo and was ordered not to contact the alleged victims.
7. The order to report was cancelled on 16 March, 2010, but he was still prohibited from leaving Kosovo. He heard nothing more from the Prishtinë/Priština District Court after his release and he assumed that the case had been closed by EULEX.

Approximately six (6) months after his release, he was referred for treatment in a health centre in the Republic of Serbia. His lawyer made an application to the court, requesting it to lift the order of 16 December 2009. The application was dismissed on 5 August, 2010.

8. On 19 December, 2010, the complainant was notified of a court hearing for the confirmation of the bill of indictment. Approximately three hearings concerning the bill of indictment were held thereafter.
9. On 22 July 2011 the applicant was acquitted by a judgment given by the District Court of Prishtinë/Priština.

III. COMPLAINTS

10. The complainant submits that the period in detention was very hard on him because of the separation from his family. His family was only allowed to visit him some ten (10) days after he had been put into detention. During this period he did not know what had happened to his family. This state of affairs had an adverse impact on his health which manifested itself through high blood pressure, bladder problems and sudden weight loss. Furthermore, the sense of injustice was particularly hard to take since he was accused of something that he could never do.
11. The complainant is of the opinion that EULEX police officers and the EULEX prosecutor 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 denied him the right to a trial within a reasonable time.

IV. THE LAW

General conditions of procedural admissibility

12. 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).
13. 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 Rules of Procedure.
14. 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 only 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

15. 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 notes 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.

16. Contrariwise, the Panel is of the opinion, that 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

17. However, 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 from the date of the alleged violation, whichever is more favourable to the Complainant.
18. In relation to the alleged human rights violations caused by the actions taken by the EULEX Police and EULEX Prosecutor during the arrest of the complainant and the subsequent house search on 23 September 2009, the complaint should have been lodged the at the latest on 9 September 2010. The complaint was filed some 19 month later, on 21 April 2011. 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 a 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, and

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

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