



INADMISSIBILITY DECISION

Date of adoption: 23 November 2011

Case No. 2011-22

Mr. Hysni Gashi and Mr. Feriz Gashi

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 30 June 2011.

II. THE FACTS

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

3. On 22 April 2006 the complainants shot two persons and attempted to kill several others on a terrace of a café in Shtime/Štimlje.
4. After investigations the indictments were filed by the prosecutor at the District Court of Prishtinë/Priština on 10 January 2007.
5. The case was taken over by EULEX in December 2008, following a request by one of the complainants. By then, a total of eight (8) hearing sessions and a crime scene visit had taken place since the bill of indictment had been lodged with the District Court.
6. The main trial started with two EULEX judges in the three judge panel on 11 February 2009. A further six (6) hearings were held.
7. On 27 March 2009 the two complainants were convicted by the District Court of Prishtinë/Priština for aggravated murder, incitement to aggravated murder and other criminal acts. They were sentenced to twenty five (25) years and six (6) months, and twenty (20) years in prison, respectively. The time spent in detention on remand was counted towards the sentence.
8. To the Panel's knowledge, no appeal was lodged with the Supreme Court of Kosovo.

III. COMPLAINTS

9. The complainants claim that the presiding member of the panel of judges, a EULEX judge, acted inappropriately, that the court made an unlawful decision despite all the evidence pointing to the complainants' innocence and that EULEX supports and protects criminals for its own interests.

IV. THE LAW

10. 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.
11. According to Rule 25, paragraph 1 of the Rules of Procedure the Panel can examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate in Kosovo.
12. 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 Kosovo court unless and in so far as they may have infringed rights and freedoms protected by international human rights law applicable in Kosovo.

13. The complaint concerns judicial proceedings conducted by a court in Kosovo. The fact that EULEX judges sit on the bench of a court assigned to examine a case does not detract from the courts their character as part of the Kosovo judiciary.
14. The Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts, the legislation applied by them or the decision taken by them. Decisions of the Kosovo courts are subject to appeals and extraordinary legal remedies available under the applicable law. It is not been shown that the complainants have exhausted the appeal procedures available to them in this case.
15. As a result, the issue raised in the present complaint does not fall within the ambit of the executive mandate of EULEX Kosovo, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.
16. Furthermore, in accordance with Rule 25, paragraph 3 of the ROP¹, 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.
17. The final decision in the complainants' case was taken on 27 March 2009. The present complaint was filed with the Panel on 30 June 2011. In accordance with Rule 25, paragraph 3 of the Rules of Procedures the complaint should have been lodged latest on 9 September 2010. Therefore the complaint does not meet the admissibility criteria set out in Rule 29 of its ROP.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY,

holds that the complaint has been lodged with the Panel outside of the time-limit laid down by its Rules of Procedure and that in any event the Panel 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 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.