



INADMISSIBILITY DECISION

Date of adoption: 4 October 2012

Case No. 2012-03

Rexhep and Avdush Dobruna

Against

EULEX

The Human Rights Review Panel sitting on 4 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 29 March 2012.

II. THE FACTS

1. The complainants, Rexhep Dobruna ("first complainant") and Avdush Dobruna ("second complainant") are, respectively, father and son.
2. On 4 September 1996 the second complainant was involved in a traffic accident. He was on a tractor when it was hit by a lorry and he sustained severe injuries.
3. The first complainant authorized X.M., an advocate, to represent him and his son in negotiations over compensation with an insurance company. The first complainant maintains that the matter was not resolved due to an outbreak of the armed conflict in 1999.
4. On 2 November 2009 the Special Prosecutor of Kosovo contacted the first complainant and informed him that a certain Z.M., a lawyer allegedly representing the complainants, had received a compensation of EUR 53,726 (fifty three thousand seven hundred twenty six Euros) for the second complainant's injuries from the insurance company. The complainant maintains that he had never authorized Z.M. to represent him or his son.
5. On 5 July 2011 the Special Prosecutor charged Z.M. and two other persons with organized crime, abusing an official position and authority, issuing unlawful judicial decisions, money laundering and fraud before the District Court of Pristina.
6. On 15 September 2011 the court, the EULEX judge, sitting as confirmation judge in this matter, confirmed criminal charges against, among others, Z.M., in relation to the underlying conduct relevant to the present complaint.
7. The proceedings are pending before the first instance court.

III. COMPLAINTS

8. Without invoking any provisions of human rights instruments, the complainants allege that their rights have been violated by Z.M. who falsified the power of attorney to obtain the compensation money. They maintain that he should be tried as soon as possible.

IV. THE LAW

9. 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.

10. According to Rule 25, paragraph 1 of the Rules of Procedure the Panel can examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate.
11. The Panel notes that the complainants request, in essence, that the Panel takes measures in order to speed up the proceedings pending before the District Court of Prishtinë/Priština. The Panel has therefore decided to examine the complaint under Articles 6 (a right to a fair trial) and Article 1 of Protocol no. 1 to the European Convention on Human Rights (right to the peaceful enjoyment of one's possessions).
12. The Panel reiterates that it has no jurisdiction to review either administrative or judicial aspects of the work of Kosovo courts. Consequently, the Panel cannot influence the order and speed with which the pending complaints are examined by the courts. The fact that EULEX judges sit on the bench of any given court assigned to examine a case does not detract from the fact that this court forms part of the Kosovo judiciary (see, among others, HRRP cases nos. 2011-24, *Predrag Lazić*, § 20; 2011-10, *Dejan Jovanović*, § 33).
13. Therefore, the issues concerned in the present case do not fall within the ambit of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.
14. Moreover, the Panel notes that it has not been shown or argued that the complainants cannot vindicate their civil rights arguably arising out of the allegations of misappropriation of the compensation by Z.M. and other persons before the civil courts of Kosovo.

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 Officer



Magda MIERZEWSKA
Presiding Member

