



## **INADMISSIBILITY DECISION**

**Date of adoption: 4 October 2012**

**Case No. 2012-05**

**Fatmir Pajaziti**

**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. Guénaél 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 7 May 2012.

## **II. THE FACTS**

1. On 13 September 2010 the complainant and six other persons were charged by the Special Prosecutor of Kosovo with organized crime and smuggling of migrants.
2. The indictment was confirmed by the confirmation judge of the District Court of Prishtinë/Priština on 20 October 2010.
3. On 17 June 2011 the mixed panel of EULEX and local judges gave judgment. The complainant was acquitted of participating in an organized crime group but found guilty of smuggling of migrants and sentenced to seven years' imprisonment. The complainant and the co-defendants appealed against the judgment.
4. On 3 October 2012 the Supreme Court sitting as a mixed panel of two EULEX and three local judges, presided by an EULEX judge rejected all the appeals and confirmed all prison sentences.

## **III. COMPLAINTS**

5. The complainant alleges violations of the Universal Declaration of Human Rights and the European Convention for Protection of Human Rights and Fundamental Freedoms. Whilst referring to no particular provision of these instruments, the complaint is understood to allege that there were no grounds for the complainant's conviction and that his right to be presumed innocent and to be treated as such in the course of his trial were violated by the District Court of Pristina.

## **IV. THE LAW**

6. 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.
7. 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.
8. The Panel notes that the complainant submits, in essence, that he has been unfairly convicted in violation of his right to be presumed innocent.
9. According to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot review judicial proceedings before the courts of Kosovo. It has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Those are within the sole competence of the Kosovo

courts. Furthermore, the Panel has already found that the fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, inter alia, HRRP cases nos. 2011-24, *Predrag Lazić*, § 20; 2011-10, *Dejan Jovanović*, § 33).

10. As a result, the issue raised in the present complaint does not fall within the ambit of the executive mandate of EULEX Kosovo. Therefore, the issue does 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.

**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