



INADMISSIBILITY DECISION

Date of adoption: 27 November 2013

Case No. 2013-01

I.

Against

EULEX

The Human Rights Review Panel sitting on 27 November 2013 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Kaija DOMINIK, 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 as last amended on 15 January 2013,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The case was registered with the Panel on 24 January 2013. The complainant objected to having his/her name being made public due to concerns for his/her personal security.

II. THE FACTS

The following facts appear from the information the complainant has provided to the Panel.

2. The complainant submits that, in June 2011, he/she together with 617 citizens from the municipality of Klokot filed a petition against the mayor of the municipality. The petition was addressed to the Ministry of Local Self-Government and related to allegations of corruption against the local municipal officials.
3. At the same time, the complainant together with other persons filed criminal charges on allegations of corruption against the mayor of Klokot with the District Prosecution Office of Gjilan/Gnjilane. The complainant submits that they provided a considerable body of evidence „*confirming the misuse of the official position of the mayor of the municipality of Klokot*“. Further, the complainant submits that all relevant material was also submitted to the Anti-corruption Department at the police office of Gjilan/Gnjilane.
4. The case relates to allegations of undue release of money, in the amount of approximately 10,000 euros, from the treasury of the municipality to a private company. The money had allegedly been assigned to a project pertaining to the planting of trees and arranging a school-playground. The complainant alleges that the company never provided the services it was paid for.
5. By a decision of 28 December 2012, a mixed team of prosecutors composed of the District Public Prosecutor in Gjilan/Gnjilane and an EULEX Prosecutor decided to discontinue the investigation into the allegations. The decision first summarized the corruption allegations made by the inhabitants of the municipality. It further referred to various pieces of evidence which had been taken in the course of the investigation. The prosecuting authorities took evidence from the defendants' statements. It also questioned a number of witnesses living in the municipality (B.B., J.J., Z.B., S.M., D.S., H.R., M.B., A.E., T.S., F.H. and Z.C.) and appointed financial experts to examine financial documents relevant to the case. It also referred to unspecified items of unspecified "physical evidence".
6. The prosecution had assigned a number of experts to examine the financial documents of the municipality with a view to establishing whether the criminal offence of "abusing official position or authority" had been committed. In its decision of 28 December 2012 the prosecution had regard to the conclusion of the expert who had determined that procurement procedures were followed in line with the Law on Public Procurement. They concluded that no offence had been committed. The prosecutor also requested the expert to provide his opinion as to whether the selection of the economic operator was done in accordance with the Law for Public Procurement. The expert

concluded that this was the case and that that no pecuniary damage resulted to the municipality as a result of the acts complained of.

7. The prosecutor's decision to discontinue the investigation did not contain a description of the facts as established on the basis of the evidence.
8. The prosecuting authorities concluded, referring in general terms to the evidence mentioned above, and in particular to the opinions given by the experts, that no one had a case to answer as no criminal offence had been committed.

III. COMPLAINTS

9. The complainant submits that he, as a citizen of the municipality, together with 617 other individuals who signed the petition, was directly affected by the alleged corrupt conduct of the mayor and that his basic human rights have thereby been violated. In particular, the complainant alleges that public money for a project of planting trees and arranging a school-playground in the municipality were misappropriated.

IV. THE LAW

10. As a matter of substantive law, the Panel is empowered to apply human rights instruments listed in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. The European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, stipulating standards for the protection of human rights which must be guaranteed by the public authorities in all democratic legal systems, are of particular significance for the work of the Panel.
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.

Actions taken by EULEX Prosecutors

12. The Panel has already held that the actions of EULEX Prosecutors or the police taken within the context of a criminal investigation are part of the executive mandate of the EULEX Kosovo and may therefore fall within the ambit of the Panel's mandate (see, for instance, *Z against EULEX*, 2012-06, 10 April 2013, at par. 32; *W against EULEX*, 2011-07, 5 October 2012 at par. 21; *Hoxha against EULEX*, 2011-18, 23 November 2011 at par. 22 and *Slobodan Martinovic against EULEX*, 2011-11, 23 November 2011 at par. 16)
13. The Panel has further held that actions or omissions by prosecutors during the investigative phase of criminal proceedings cannot be

considered as being made in the context of “judicial proceedings (see *Thaqi v. EULEX*, 2010-02, 14 September 2011, par. 64). In this regard, the Panel held 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 *Z against EULEX*, 2012-06, 10 April 2013, at par. 33; *Thaqi v. EULEX*, 2010-02, 14 September 2011 at par. 93). The Panel is therefore satisfied that it has jurisdiction to examine the present case.

14. The Panel notes that prosecuting authorities collected evidence from various sources, through questioning of witnesses and from financial experts as well as through the review of unidentified physical evidence.
15. The Panel notes, however, that the prosecutor’s decision of 21 December 2012 does not enable the Panel to ascertain what facts were established by the prosecuting authorities on the basis of the evidence available to them. For instance, no findings of fact were made as to whether the trees had actually been planted as planned and whether the school playground had been arranged or not. No other findings of fact were made in relation to the charges of corruption. Nor has it been explained how the provisions of substantive law were applied by the prosecution to the circumstances of the case and what was the reasoning which had led the prosecuting authority to its legal assessment that no criminal offence had been committed.
16. Nonetheless, notwithstanding certain shortcomings noted by the Panel in the prosecutor’s decision to discontinue the investigation, the Panel observes that, according to Rule 25, paragraph 1 of the Rules of Procedure, it can only examine complaints by persons claiming to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors. The Panel will turn to this question next.

Victim status

17. In this connection, the Panel notes that the complainant claims that he is a victim of the alleged corrupt conduct of the mayor of the municipality in which he lives. The Panel observes that the allegation of corruption has not been made out and was in fact rejected by the competent authorities.
18. Following the recent adoption of a number of international documents (compare for instance a cross-regional statement on corruption and human rights delivered by on the 20th session of the Human Rights Council on behalf of 134 States), including the United Nations Convention against Corruption, the Panel recognizes the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice.


19. The Panel further acknowledges that in certain situations corruption may indeed amount to or involve a threat to the effective enjoyment of human rights. The Panel emphasizes that corruption, in so far as it undermines the rule of law and the confidence of citizens in the effectiveness of the legal system, may constitute an obstacle to the effective realization and enjoyment of human rights.
20. However, as to the meaning of the word "victim", the European Court of Human Rights has found on many occasions that a "victim" within the meaning of the Convention denotes the person directly affected by the act or omission in issue (see, among many authorities, *Amuur v. France*, 25 June 1996, par. 36, Reports of Judgments and Decisions 1996-III).
21. The Panel does not exclude that corrupt behaviour of a public official could confer victim status on an individual whose human rights are affected by such conduct. However, for this to be the case, it would be necessary to establish a link between the alleged corrupt conduct and the detrimental consequences for that individual's human rights.
22. In this connection, the Panel notes that the complainant did not advance arguments that would allow the Panel to accept that he had suffered individually detrimental consequences as a result of the alleged conduct of the municipal authorities other than his dissatisfaction with the allegedly improper allocation of the part of the municipal budget. It has not been shown that the decision to discontinue the investigation affected the complainant's human rights, or even the human rights of other persons who had submitted their complaint to the prosecuting authorities for that matter.
23. The Panel concludes, therefore, that the complainant cannot claim to be a victim of a human rights violation by EULEX Kosovo within the meaning of Rule 25, paragraph 1 of the Rules of Procedure.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY

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

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member