



INADMISSIBILITY DECISION

Date of adoption: 27 May 2014

Case No. 2014-06

B.Y.

Against

EULEX

The Human Rights Review Panel sitting on 27 May 2014
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Katja 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 complaint was registered on 6 February 2014.

II. THE FACTS

2. The complainant submits that he is regularly attacked by his neighbours with "a laser or a laser battery". Due to those laser attacks it is not possible for the complainant to live a normal life in his house or yard.
3. According to the complainant, he and his family are attacked during day and night, and the family members suffer burns all over the body. It is submitted that "*radiation is high and as a result we suffer heavily body injuries when we are hit by this laser*". Allegedly, those attacks are ongoing for over one and a half years and are still continuing.
4. The complainant submits that he contacted the police in Pejë/Peć on 18 occasions, but they did not react accordingly.
5. On 11 December 2013, an EULEX Prosecutor informed the complainant that she has carefully reviewed his documents that had been received on 20 November 2013. The EULEX Prosecutor informed the complainant that on 23 September 2013 the Basic Prosecution Office in Pejë/Peć dismissed the criminal report filed by the complainant on 9 July 2013, having "*conducted all necessary actions*" in this case. The complainant was informed "*that on the basis of the information received, there [was] no reason for a EULEX Prosecutor to intervene.*"
6. On 23 December 2013, the EULEX Prosecution Office received a complaint in regard to the same case from the complainant. On 5 February 2013, an EULEX Prosecutor informed the complainant that his case had been carefully reviewed, and that the same complaint was filed earlier by the complainant, to which the EULEX prosecution had already responded on 11 December 2013.
7. In addition, the EULEX Prosecutor informed the complainant about the possibility of complaining about the Kosovo police at the Police Inspectorate of Kosovo. The complainant was informed that his case did not fall under the competence of EULEX Prosecutors and that no further steps would be taken in this case.

III. COMPLAINTS

8. The complainant, in essence, complains about the inaction of the Kosovo Police and requests EULEX prosecutors to examine his allegations.

IV. THE LAW

9. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.
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 the justice, police and customs sectors.
12. The Panel has already held that the actions of EULEX prosecutors taken within the context of criminal investigations were part of the executive mandate of EULEX Kosovo and therefore fell within the ambit of the Panel's mandate (see, for instance, *I against EULEX*, 2013-01, 27 November 2013, par. 12; *E against EULEX*, 2012-17, 30 August 2013, at pars. 20-22; *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; *S.M. against EULEX*, 2011-11, 23 November 2011 at par. 15)
13. The Panel has further held that actions or omissions by the prosecutors during the investigative phase of criminal proceedings could not be considered as being made in the context of "judicial proceedings" (see *Thaqi v. EULEX*, 2010-02, 14 September 2011, par. 64). It 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 *Thaqi v. EULEX*, 2010-02, 14 September 2011, par. 93).
14. As regards the present case, the Panel notes the EULEX Prosecutor's statement that the (local) prosecuting authorities conducted "all necessary actions" in this case.
15. The Panel notes that the EULEX prosecuting authorities reviewed the case twice and decided not to investigate the case. While it would be commendable to provide the reasons for declining to take over a case, the Panel notes the decisions of the Kosovo State Prosecutor who decided, having examined the complainant's allegations, that no criminal offence of causing general danger had been committed.
16. Therefore, the Panel cannot conclude that those decisions were taken by EULEX Prosecutors arbitrarily. Further, it cannot be concluded on

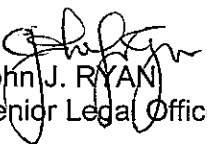
the basis of information available to the Panel, that the alleged criminal offence would fall under the authority of EULEX Prosecutors under the Law on the Jurisdiction, Case selection and Case allocation of EULEX Judges and Prosecutors. Lastly, the Panel notes that the EULEX Prosecutor informed the complainant about the possibility of submitting his complaint about the alleged failure of the Kosovo Police to act to the Police Directorate 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 (e) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member