



INADMISSIBILITY DECISION

Date of adoption: 27 June 2016

Case No. 2015-01

Miloš Jokić

Against

EULEX

The Human Rights Review Panel sitting on 27 June 2016 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Elka FILCHEVA - ERMENKOVA, Substitute Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Joanna MARSZALIK, Legal Officer
Mr Paul LANDERS, 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 24 February 2015. Due to the resignation of Ms Katja Dominik as a Panel Member, she was replaced in the deliberations by Ms Elka Filcheva–Ermenkova, the

Substitute Member of the Panel, in accordance with Rule 14 par. 2 of the Rules of Procedure.

II. THE FACTS

2. The facts as submitted by the complainant can be summarised as follows.
3. The complainant was arrested on 26 August 1999 on suspicion of having committed acts of genocide. He was convicted of war crimes and sentenced to twenty years of imprisonment on 20 June 2000. As a result of a retrial, on 3 May 2002, he was acquitted of all charges and released from detention.
4. In April 2009, the complainant lodged a claim for compensation against the Kosovo Government for unjustified detention with the Basic Court of Pristina, branch office in Gračanica/Graçanicë. From the record available to the Panel, it appears that the judge initially assigned to his case was promoted to a higher court on an unspecified date in 2012 and that no replacement was assigned to this case. It also appears that the hearing in this case has yet to be scheduled.
5. On an unspecified date in 2009, the complainant asked EULEX to take over his case. On 18 October 2009, the EULEX judge replied that the case did not fall within the ambit of the Mission's mandate and advised the complainant to follow the regular civil procedure.
6. The complainant repeated his request on 26 March 2010, 8 February 2011, 15 October 2012 and 3 March 2014. Each time (letters of 9 December 2011, 5 July 2011, 16 October 2012 and 22 October 2014 respectively), he was informed by EULEX judges or judicial legal officers that, in accordance with Article 5 of the Law no. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors, the case did not fall within the jurisdiction of the EULEX judges. His claim for compensation for deprivation of liberty could not be considered a "property related" claim within the meaning of that Article.

III. COMPLAINTS

7. The complainant submits that his right to a fair trial within a reasonable time as guaranteed by Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms (the Convention) and by Article 10 of the Universal Declaration of Human Rights (the Declaration) has been violated. He also maintains that he had no effective legal remedy to prevent further violations of his rights, in breach of Article 13 of the Convention and

Article 8 of the Declaration. He further alleges a violation of Article 5(5) of the Convention (the right to compensation for unlawful detention).

IV. THE LAW

8. 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 (the Convention) 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.
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 the human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.
11. The Panel reiterates that, as it has held on numerous occasions, according to Rule 25, paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot in principle 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 exclusive competence of the Kosovo courts (see, among others, *Shaip Selmani* against EULEX, 2014-23, 10 November 2014, §12; *Gani Gashi* against EULEX, 2013-22, 7 April 2014, § 11).
12. The tenor of the complaint appears to pertain exclusively to acts or alleged failures of the Kosovo judiciary. It follows that the complaint does not fall within the executive mandate of EULEX Kosovo. Therefore, the issue falls outside the ambit of the Panel's competence, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.
13. Finally, the Panel notes that it has not been that the position taken by EULEX regarding the Mission's authority to take over the case was unreasonable or fell beyond their competence.
14. As noted above, the Panel has no jurisdiction over the complaint absent any involvement by EULEX in the proceedings before the Gračanica/Graçanicë court and absent any indication of a right violation arising from the Mission's refusal to take over the case.

Nonetheless, the Panel cannot but note with concern the overall length of these proceedings and the apparent reason for it. Proceedings have been going on for over six years. The hearing in the case has yet to take place and no judge has been assigned to this case for that purpose since the promotion of the competent magistrate to a higher court in 2012. Absent the Panel's competence over this matter, it would fall to the complainant to raise the issue of its compatibility with relevant human rights standards.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, as it falls outside its jurisdiction 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