



INADMISSIBILITY DECISION

Date of adoption: 10 April 2018

Case No. 2017-01

A.Z.

Against

EULEX

The Human Rights Review Panel sitting on 10 April 2018 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Mr Jorge MARTINS RIBEIRO, Substitute Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Joanna MARSZALIK, 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 13 March 2017.
2. The Panel conceded to the complainant's wish not to have his name disclosed. She will be referred to as A.Z.
3. Ms Bednarek recused herself from the case due to an appearance of conflict of interests and did not participate in the consideration of the

case, in accordance with Rule 12(1) (1) of the Panel's Rules of Procedure. She was replaced by Mr Jorge Martins Ribeiro, the Substitute Member of the Panel.

II. THE FACTS

4. The facts of the case, as submitted by the complainant can be summarised as follows:
5. The complainant submits that she has been persecuted and tortured at work by persons connected to and protected by the PDK political party. She further alleges that she has been a victim of psychological domestic abuse, committed by her mother. She has complained about these matters to a number of local and international institutions, including the Ombudsperson Institution of Kosovo and the OSCE.
6. On 15 and 16 April 2014, the complainant raised her allegation against her colleagues and her mother in a letter to the Special Prosecution Office of the Republic of Kosovo (SPRK).
7. On 2 June 2014, the Acting Deputy Chief EULEX Prosecutor informed the complainant that the SPRK had carefully reviewed her submissions. However, in accordance with provisions of the Law no. 03/L-052 on the Special Prosecution Office of the Republic of Kosovo, she was told that there was no basis for the SPRK to exercise its competence in this particular case. He advised the complainant to address her allegations to the Basic Prosecution in Prizren. He also recommended that she seeks legal advice from a qualified private lawyer and provided her with contact details of the Office of Legal Aid Commission, which provided legal aid.
8. On 9 January 2015, the complainant sent a letter to the Office of the Chief EULEX Prosecutor. On 15 January 2015, the Acting Chief EULEX Prosecutor answered that her submissions had been carefully reviewed but that, based on the Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law on Jurisdiction), her request did not fall within the competence of the EULEX Prosecutors and that no further steps would be taken. In addition, the Acting Chief Prosecutor advised the complainant that she should file a complaint with the competent local authorities.
9. On 26 January 2015, the Office of the Chief EULEX Prosecutor received one more similar complaint from the complainant. In his response of 27 January 2015, the Acting Chief Prosecutor reiterated what he had said in his letter of 15 January.

III. RELEVANT APPLICABLE LAW

Law no. 2008/03-L053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors

Article 7 General authority and competences of EULEX prosecutors

7.1. EULEX prosecutors will have the authority and responsibility to perform their functions, including the authority to conduct criminal investigations as stipulated in Article 2.1 of this Law, unless foreseen different by this Law.

7.2. The EULEX prosecutors will be competent to investigate and prosecute the crimes that fall under the competence of the SPRK in accordance with the law on SPRK.

Law no. 03/I-052 on the Special Prosecution Office of the Republic of Kosovo (Law on SPRAK)

Article 5 Exclusive competence of the SPRK

5.1 The SPRK will have exclusive competence to investigate and prosecute the following crimes, also in the forms of attempt, and the various forms of collaboration to the crimes of:

- a) commission of Terrorism (Art. 110, PCCK);
- b) failure to Report Preparation of Criminal Offences (Art. 303, PCCK), Failure to Report Criminal Offences or Perpetrators (Art. 304, PCCK) and Providing Assistance to Perpetrators (Art. 305, PCCK) when these offences are committed in relation to Terrorism (Assistance in the Commission of Terrorism - Art. 111, PCCK);
- c) facilitation of the Commission of Terrorism (Art. 112, PCCK), Organization, Support and Participation in Terrorist Groups (Art. 113, PCCK)
- d) genocide (Art. 116, PCCK);
- e) crimes Against Humanity (Art. 117, PCCK);
- f) war Crimes in Grave Breach of the Geneva Conventions (Art. 118, PCCK), War Crimes in Serious Violation of Laws and Customs Applicable in International Armed Conflict (Art. 119, PCCK), War Crimes in Serious Violation of Article 3 Common to the Geneva Conventions (Art. 120, PCCK), War Crimes in Serious Violation of Laws and Customs Applicable in Armed Conflict not of an International Character (Art. 121, PCCK);
- g) attacks in Armed Conflict not of an International Character Against Installations containing dangerous forces (Art. 122, PCCK);
- h) conscription or Enlisting of Persons between the Age of Fifteen and Eighteen years in Armed Conflict (Art. 123, PCCK);
- i) employment of Prohibited means or methods of Warfare (Art. 124, PCCK);
- j) organization of Groups to Commit Genocide, Crimes Against Humanity and War Crimes (Art. 128, PCCK);
- k) endangering Internationally Protected Persons (Art. 141, PCCK);
- l) unlawful Appropriation, use, transfer and disposal of nuclear material (Art. 144, PCCK); m) threats to use or commit theft or robbery of nuclear material (Art. 145, PCCK);
- n) organized Crime (Art. 274, PCCK), Intimidation during Criminal Proceedings for Organized Crime (Art. 310, PCCK);
- o) Criminal Offences listed in Article 10 of UNMIK Regulation No. 2004/2 On the Deterrence of Money Laundering and Related Criminal Offences as amended.

IV. COMPLAINTS

10. The complainant submits that she has been subjected to degrading treatment by her mother and her co-workers, in violation of Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (the Convention).
11. She further complains of a violation of Article 6 of the Convention (right to a fair trial) and submits that her domestic violence case has not been examined by courts for three and a half years.
12. The complainant also invokes Articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression) of the Convention. She submits that she has been persecuted by her colleagues because of her political views. She further alleges that she has been denied access to information regarding her parentage.
13. Lastly, the complainant invokes Article 14 of the Convention (prohibition of discrimination) and alleges that she has been discriminated against by her co-workers as well as international and local institutions, due to her religious and political views.

V. THE LAW

14. 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 which must be guaranteed by public authorities in all democratic legal systems.
15. 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.
16. 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.
17. The Panel has already held on numerous occasions 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, *B.Y. against EULEX*, 2014-06, 27 May 2014, par. 12; *I against EULEX*, 2013-01, 27 November 2013, par. 12; *E against EULEX*, 2012-17, 30 August 2013, pars. 20-22; *Z against EULEX*, 2012-06, 10 April 2013, par. 32; *W against EULEX*, 2011-07, 5

October 2012, par. 21). The Panel is therefore competent to examine the complaint.

18. The Panel notes that in this particular case the EULEX prosecuting authorities reviewed the complainant's submissions on several occasions and decided not to investigate the case as it fell outside of their jurisdiction.
19. Having carefully reviewed the record of this case, the Panel finds that the complainant's case, concerning domestic abuse and workplace bullying, manifestly does not fall within the ambit of cases which, at the time, could have been taken over by EULEX prosecutors within the meaning of Article 7 of the Law on Jurisdiction (see Chapter II. Relevant Applicable Law). The Panel further cannot conclude on the basis of information available that the alleged criminal offences would fall under the authority of EULEX Prosecutors under the Law on Jurisdiction. Therefore, and based on the above, the Panel cannot conclude that EULEX Prosecutors acted arbitrarily when refusing to entertain the complainant's requests.
20. The Panel notes that the EULEX Prosecutors advised the complainant about the possibility of filing a complaint against the alleged perpetrators with the competent local authorities and recommended that she seeks legal advice. She is therefore been informed of legal remedies to secure protection of her rights.
21. Furthermore, the Panel notes that the conduct complained of would seem to fall outside of the six-month timeframe within which a complaint must be filed with the Panel, according to Rule 25(3) of the Panel's Rules of Procedure (see, e.g. *Axhemi Zyhdi against EULEX*, 2016-05, 17 October 2017, pars 14-16; *Syla against EULEX*, 2015-10, 1 March 2016, par. 16). The present complaint was brought before the Panel on 13 March 2017, while the last letter from the Acting chief EULEX Prosecutor was sent on 27 January 2015. There is no indication of any EULEX involvement after that date.

FOR THESE REASONS,

The Panel, unanimously, finds that the complaint manifestly ill-founded within the meaning of Article 29 (e) of its Rules of Procedure, and that it fails to comply with Article 25(3) of the Rules regarding time-limit for filing of a complaint, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member