



INADMISSIBILITY DECISION

Date of adoption: 24 May 2018

Case No. 2017-07

C.X.

Against

EULEX

The Human Rights Review Panel sitting on 24 May 2018 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Anna BEDNAREK, 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 with the Panel on 11 October 2017.
2. The complainant asked the Panel to withhold details about his identity. In light of the circumstances of the case, the Panel has granted the request.

II. THE FACTS

3. The facts of the case, as submitted by the complainant, and as apparent from documents available to the Panel, may be summarized as follows:
4. On 13 September 2010, the complainant and six other co-defendants were charged by the Special Prosecutor of Kosovo with organised crime and smuggling of migrants.
5. The indictment was confirmed by the confirmation judge of the District Court of Pristina on 20 October 2010.
6. On 17 June 2011, a mixed panel of EULEX and Kosovo judges rendered its judgment in the case. The complainant was found guilty of participating in an organised crime group in conjunction with the smuggling of migrants and sentenced to nineteen years of imprisonment. He was also fined 250,000 Euros. The complainant and co-defendants appealed against the judgment.
7. On 2 October 2012, the Supreme Court sitting as a mixed panel of EULEX and Kosovo judges and presided by an EULEX judge, rejected all appeals and upheld the first-instance judgment.
8. On 2 April 2014, the Supreme Court, sitting as a mixed panel of one EULEX and two Kosovo judges rejected the complainant's and other co-defendants' request for protection of legality as ill-founded.

III. COMPLAINTS

9. Without invoking any specific provisions of instruments for the protection of human rights, the complainant submits that he was unfairly convicted and protests his innocence. From the tenor of his complaint, he appears to allege a violation of his fair trial rights under, *inter alia*, Article 6 of the European Convention of Human Rights and Article 14 of the International Covenant on Civil and Political Rights.

IV. THE LAW

10. 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.
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.

12. 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.
13. The Panel has held on numerous occasions that, according to Rule 25, paragraph 1, of its Rules of Procedure, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo. The fact that EULEX judges sit on the bench does not detract from the fact that the courts form part of the Kosovo judiciary (see, inter alia, *Shpresim Uka against EULEX*, 2016-06 & 2017-04, 17 October 2017, par. 22; *Z.A. against EULEX*, 2014-36, 29 February 2016, par. 17; *K.P. against EULEX*, 2014-31, 21 April 2015, par. 13; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, par. 13).
14. It follows from that fact alone that the complaint falls outside the ambit of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.
15. Furthermore, the Panel notes that the conduct complained of falls outside of the six-month timeframe within which a complaint must be filed with the Panel (Rule 25(3) of the Panel's Rules of Procedure). The decision of the Supreme Court, rejecting the complainant's request for protection of legality was rendered on 2 April 2014, while the present complaint was brought before the Panel on 11 October 2017 long after the applicable deadline of 2 October 2014 had passed.

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 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