



DECISION TO STRIKE OUT A COMPLAINT

Date of adoption: 27 June 2016

Case No. 2014-39

Musli Hyseni

Against

EULEX

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

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

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Mr Paul LANDERS, 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 October 2014. 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 of the case as submitted by the complainant can be summarised as follows.
3. The complainant was arrested on 5 November 2013 at his house in the village of Bresalc on suspicion of the following criminal offences:
 - Offence of preparing terrorist activities or criminal offence committed in complicity as foreseen by Article 144 (1) of CCK in relation to Article 31 of CCK, punishable with a fine and imprisonment of 1 to 5 years.
 - Offence of participating in a terrorist group as foreseen by Article 143 (2) of the CPCK in relation to Article 135 (4) of the CPCK, punishable with imprisonment of 5 to 10 years.
 - Offence of unauthorised purchase of weapons, as specified in Article 372 (2) of the CPCK, punishable with imprisonment of 1 to 10 years.
 - Offence of incitement to hatred, division or national, religious or ethnic intolerance as foreseen by Article 147(1) of the CPCK, punishable with a fine or imprisonment of up to 5 years.
4. The complainant's arrest followed a police operation. It was alleged by the prosecutor that the complainant had been present and in the company of a co-accused (in a vehicle). The co-accused was trying to negotiate the purchase of weapons. The prosecutor was informed by the police that the complainant had been identified by them as one of the persons present in the vehicle during the attempted transaction. The prosecutor alleged that the complainant was aware of the purpose of the meeting.
5. By decision of 7 November 2013, the Pre-Trial Judge of the Basic Court of Pristina ordered the detention on remand of the complainant for one month.
6. Through a number of subsequent similar Orders, the complainant continued to be detained on remand until 15 October 2014. The complainant lodged his complaint with the Panel from the Detention Centre, Prizren, on 13 October 2014.

III. COMPLAINTS

7. The complainant alleges that his rights under Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to liberty and security, have been violated.

8. The complainant submits that while he was present and in the company of a co-accused at the material time, he was not aware of the purpose of the meeting held with a third party.
9. The complainant submits that he is innocent of the charges laid against him by the prosecutor and submits that he has been unjustly held in detention on remand for almost one year.

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 to 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 notes that the complainant's grievance concerns, in essence, a number of decisions by the Pre-Trial Judge to order his continued detention on remand for a period from 7 November 2013, to 15 October 2014.
14. On 7 March 2016, the Panel communicated with the complainant seeking an update from him in respect of the facts of the case, in particular, in relation to the status of his detention, given that the last decision of the Basic Court of Pristina available to the Panel was dated 31 July 2014. The complainant was informed that his submissions, if any, should be delivered to the Panel by 1 April 2016.
15. The Panel did not receive any further written response from the complainant to its request dated 7 March 2016.
16. On 11 April 2016, the complainant contacted the Secretariat of the Panel and indicated that he no longer wished to pursue his complaint and that he had been released from detention. He provided no further details to the Secretariat.

17. Rule 29 *bis* provides that the Panel may, at any stage of the proceedings, decide to strike a complaint out of its list of cases where the circumstances lead to the conclusion that the complainant does not intend to pursue his or her complaint.
18. Noting the unwillingness of the complainant to continue with his complaint, the Panel is of the view that the complaint should no longer be examined.

FOR THIS REASON, The Panel, unanimously,

decides to strike the application out of its list of cases in accordance with Rule 29 *bis*, paragraph 1, of its Rules of Procedure.

For the Panel,

John J. Ryan
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member