



INADMISSIBILITY DECISION

Date of adoption: 20 March 2012

Case No. 2011-21

Ventor Maznikolli

Against

EULEX

The Human Rights Review Panel sitting on 20 March 2012 with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, Panel Member
Ms. Verginia MICHEVA-RUSEVA, Panel Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Leena LEIKAS, 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 of 9 June 2010,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 18 June 2011.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, and as apparent from documents provided to the Panel, may be summarized as follows.

3. On 21 November 2003 the District Prosecutor filed an indictment against the complainant charging him with the criminal offence of murder, minor bodily harm and illegal possession of weapons and ammunition allegedly committed on 23 August 2003 in Pejë/Peć.
4. On 28 January 2004 the complainant was acquitted of murder and sentenced for the other offences to six (6) months in prison.
5. On 27 January 2005 the Supreme Court of Kosovo quashed the acquittal and returned the case with regard to murder to the first instance court for retrial.
6. On 8 May 2007 the retrial was concluded and the complainant was acquitted again, as the court found that the murder was committed in necessary self defense.
7. On 6 December 2007 the Supreme Court of Kosovo quashed the acquittal anew and sent the case back to the first instance court for retrial.
8. On 28 December 2009 the President of District Court of Pejë/Peć filed a request to EULEX to take over the case. The request was granted on 21 January 2010.
9. On 23 July 2010 the District Court of Pejë/Peć found the complainant guilty of provoked murder, committed on 23 August 2003 in Pejë/Peć. He was sentenced to eight (8) years of imprisonment.
10. The complainant appealed the decision to the Supreme Court of Kosovo on 15 October 2010. At the time of lodging the complaint he resided in Dubrava Prison.

III. COMPLAINTS

11. The complainant requests that a hearing on his appeal be arranged before the Supreme Court as soon as possible. He finds that his fundamental rights and his rights as a prisoner are violated due to the delay.

IV. THE LAW

12. 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.
13. 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.

14. The Panel notes that the complainant requests, in essence, that the Panel takes measures in order to speed up the proceedings in his case which is pending before the Supreme Court of Kosovo.
15. The Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Consequently, the Panel cannot influence the order and speed with which the pending complaints are examined by the Supreme Court. The fact that EULEX judges sit on the bench of the Supreme Court assigned to examine the case does not detract from the Supreme Court its character as part of the Kosovo judiciary. (See also cases nos. 2011-24, *Predrag Lazig*, paragraph 20; 2011-10, *Dejan Jovanovic*, paragraph 33. among others).
16. As a result, the issue raised in the present complaint does not fall within the ambit of the executive mandate of EULEX Kosovo. Therefore, the issue does not fall within the ambit of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.
17. Additionally, the Panel notes that on 2 August 2011 the Supreme Court of Kosovo dismissed the appeal lodged by the complainant.

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 (d) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Antonio BALSAMO
Presiding Member