



INADMISSIBILITY DECISION

Date of adoption: 7 March 2017

Case No. 2015-06

X.C.

Against

EULEX

The Human Rights Review Panel sitting on 7 March 2017 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Elka ERMENKOVA, Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Noora AARNIO, 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 27 May 2015.

2. On 14 February 2017, the Panel requested the complainant to submit further information on the status of the criminal proceedings as well as relevant documents.
3. On 21 February 2017, the complainant provided the requested documents.

II. THE FACTS

4. The facts of the case as submitted by the complainant may be summarised as follows:

An indictment against him dated August 2014 was filed in the Basic Court of Pristina by the EULEX Special Prosecutor. The complainant was charged with co-perpetration of an offence of robbery. At the time of the initial filing of the complaint with the Panel the criminal trial against the applicant was pending before that court, composed of two EULEX Judges and one Kosovo Judge.

5. During the proceedings, the complainant notified the court of the applicability of the principles of "*ne bis in idem*" and "*res judicata*" to his case. The court informed the parties that the issue of "*ne bis in idem*" would be addressed in the judgment and could thus be appealed.
6. Also, the NGO "QKRMT" raised the issue of the applicability of the principles of "*ne bis in idem*" and "*res judicata*" to the applicant case by way of a letter to EULEX. In a reply to this request, dated 31 March 2015, the Office of the Chief of Staff of EULEX noted that the issue was still under judicial consideration.
7. In its judgment of 7 August 2015, the Basic Court of Pristina found the complainant guilty as charged. In its reasoning the Basic Court discussed the effect of the judgment issued in Bahrain in criminal proceedings against the applicant to the applicability of the principle of "*ne bis in idem*" thoroughly and drew the conclusion that the principle did not apply in this case.
8. Counsel for the defendant appealed against the judgment. He submitted in that context that Article 4 of the CPCK, which defined the principle of "*ne bis in idem*", had been violated. The following issues were also raised before the Basic Court:
 - The principle of "*ne bis in idem*" was a well-established and universal principle of international law. As such it had an absolute character and therefore could not be ignored.

Also Article 4 of the CPCK, Articles 22.2 and 145.2 of the Constitution of Kosovo as well as Article 4 of Additional Protocol no. 7 of European Convention on Human Rights recognised this principle. Further, Article 35.1 of the European Convention on the Transfer of Proceedings in Criminal Matters made explicit reference to the “*ne bis in idem*” principle. This convention had been ratified by Yugoslavia and was applicable in Kosovo on the basis of UNMIK regulation 1999/24. Accordingly, it was submitted that the principle of “*ne bis in idem*” should be implemented in Kosovo and in this particular case. On that basis, counsel for the complainant argued that the trial of the Basic Court should be considered invalid because it violated that principle.

- It was unclear whether the two judgments from Bahrain which were said to trigger the application of the principle of “*ne bis in idem*” were still valid/applicable. It was also unclear which authorities in Bahrain were authorised to overturn those judgments. Therefore, there were no guarantees that those decisions would not be implemented. Counsel for the complainant therefore suggested that the Basic Court had not addressed these concerns adequately. Therefore he submitted that the Court of Appeal should pay attention to this crucial principle and to issue an acceptable decision.

9. On 11 August 2016, the Court of Appeal, in a panel composed of only local Judges, issued its judgment. The Court allowed the appeal and modified the judgment but only in respect of sentencing. In its reasoning, the Court of Appeal dismissed the complainant’s submissions regarding the applicability of the “*ne bis in idem*” principle in his case.

III. COMPLAINTS

10. The complainant avers that he has been tried, found guilty and convicted to a life imprisonment for the exact same criminal offence as he was earlier found guilty of in the Kingdom of Bahrain.
11. The complainant further submits that he has been mistreated whilst in detention. He states that he had his hands and feet cuffed in a cruel manner, that he was alone in his cell for almost one year, that no medical treatment was provided to him and that no prisoner classification has been made (which would allow him to be released for weekends). He submits that EULEX should have visited him.

12. The complainant submits that his right to a fair trial (in particular, the principles of *ne bis in idem* and *res judicata*) and his right not to be subject to torture and degrading treatment have been violated.

IV. THE LAW

General requirements of admissibility

13. 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.
14. Before considering the complaint on its merits the Panel has to decide whether to proceed with the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
15. According to Rule 25, paragraph 1, of the Rules of Procedure the Panel can examine complaints relating to alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.

Alleged violation of fair trial rights

16. The Panel notes that the complainant's grievance pertains to criminal proceedings before the Kosovo courts.
17. The Panel has repeatedly found that, according to Rule 25, paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo. Subject to the qualification mentioned below, the Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Those are within the sole competence of the Kosovo courts. Moreover, the Panel has already found that the fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, among many other, *Fahri Rexhepi against EULEX*, no. 2014-19, 10 November 2014, para. 12; *Tomë Krasniqi*

against EULEX, no. 2014-04, 27 May 2014, para. 14; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, para. 13).

18. Therefore, the Panel cannot, in principle review decisions of courts composed also of EULEX judges as such. The Panel has already held, however, that in certain circumstances the Panel's jurisdiction would cover decisions and acts of judicial authorities as such, in particular where credible allegations of human rights violations attributed to EULEX judges have not been fully addressed by the competent judicial authorities in the appellate proceedings (*Milica Radunovic against EULEX*, no. 2014-02, 12 November 2015, para. 17; *Tomë Krasniqi against EULEX*, no. 2014-04, 27 May 2014, para. 15).
19. In this case, however, the Panel notes that the judgment of the Basic Court of Pristina examined the applicability of the principle "*ne bis in idem*". Unpersuaded by the reasoning of the Basic Court the complainant raised the issues in his appeal and the appellate court re-examined the applicability of that principle. The Panel notes that the complainant's arguments were examined by the Court of Appeal so that his claim of a violation of his rights was fully addressed by the competent judicial authorities.
20. It follows that this part of the complaints 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.

Alleged mistreatment whilst in detention

21. The Panel observes that it has not been argued, let alone shown, that EULEX was in any way involved in the alleged violations of the complainant's rights, nor does it suggest a culpable failure to act on its part.
22. While the Panel acknowledges that the issues raised by the complainant are of a serious nature and should be carefully considered by the competent authorities, they fall outside of the Panel's competence, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo (see *Dobrivoje Radovanović against EULEX*, no. 2015-07, 27 June 2016, paras. 10-11; *Jovanka, Dragan and Milan Vuković against EULEX*, no. 2013-18, 7 April 2014, paras. 11-12).

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, as it as it falls outside its jurisdiction within the meaning of Article 25 (1) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member