



INADMISSIBILITY DECISION

Date of adoption: 7 March 2017

Case No. 2016-04

Valon Jashari

Against

EULEX

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

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Anna BEDNAREK, Substitute Member

Assisted by
Mr John 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 24 February 2016.
2. On 19 October 2016, Ms Elka Ermenkova recused herself from the case due to a conflict of interests and did not participate in the consideration of the case, in accordance with Rule12(1)(1) of the Panel's Rules of Procedure. She was replaced by Ms Anna Bednarek.

II. THE FACTS

3. The facts of the case as submitted by the complainant can be summarised as follows:
 - The complainant failed to provide much information about the proceedings that resulted in his criminal conviction and detention. It appears that the complainant was charged with acts of terrorism on 20 February 2013 in relation to a number of violent incidents resulting in bodily harm to people and destruction of property. On 16 October 2013, he was convicted by the Basic Court for those acts. The Judgment of the Court of Appeals in this case was issued on 1 July 2015, upholding the complainant's conviction. On 19 April 2016, the Supreme Court rendered its Judgment, by which it quashed the earlier judgments and sent the matter back for re-trial. The complainant was ordered to be kept in detention pending his re-trial.
 - According to the complainant, evidence was unlawfully seized from an apartment said by him to belong to his brother. The evidence was later used in court to obtain his conviction. He claims that the evidence was obtained illegally.
 - He repeatedly raised this issue in court, without success.
 - He also claims that unspecified written statement drafted by the EULEX Prosecutor did not correspond to what he said and complained that he received a copy of that statement only after the beginning of the main trial. He further states that that his dignity was violated in several different ways during his interrogations in July 2012 and February 2013 by that same prosecutor. He claims to have raised the issue before the Court of Appeals in January 2014 and before the Supreme Court in August 2015, again without success.

III. COMPLAINT

4. The applicant complains that during the proceedings his access to the case file was unjustifiably restricted, that the evidence against him was obtained illegally, that he received copy of his statement referred to above belatedly and that he did not enjoy effective representation during the trial and could not defend himself properly. He also complains that his trial was unduly lengthy and political in character.
5. In support of his complaint the complainant refers to Articles 6(1) and 6(3)(b)-(c) of the European Convention on the Protection of Human Rights and Fundamental Freedoms ("Convention"). He also refers to Article 14(1) and 3(b)-(c) of the International Covenant on Civil and Political Rights as well as Article 17(2) of the Universal Declaration of Human Rights.

IV. THE LAW

6. 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 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.
7. Before considering the complaint on its merits, the Panel has to decide whether to proceed with the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure
8. According to Rule 25, paragraph 1, the Panel can only examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate and this provision stipulates that the Panel is not competent to review judicial proceedings before the courts of Kosovo.
9. The Panel has repeatedly determined that, according to Rule 25 paragraph 1, of its Rules and pursuant to 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 of any given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, *inter alia*, *Fahri Rexhepi against EULEX*, no. 2014-19, 10 November 2014, para. 12; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, para. 13). Therefore, the Panel cannot in principle review decisions of EULEX judges as such.
10. The present complaint pertains to allegations of violations occurring in the context of judicial proceedings over which the Panel has no jurisdiction. The complaint therefore falls outside the competence of the Panel.
11. Furthermore, the Panel notes that the complainant has not substantiated the allegations made against EULEX. For that reason also the complaint is inadmissible.

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 is, furthermore, ill-founded and, therefore,

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member