



INADMISSIBILITY DECISION

Date of adoption: 9 January 2017

Case No. 2014-10

J.Q.

Against

EULEX

Following a request by the complainant to have his identity kept confidential, due to alleged threats to himself and his family, in accordance with *Rule 44 Rectification of errors and editorial revision*, and *Rule 45 Derogation in individual cases*, of the Rules of Procedure, on 11 June 2021 the Panel decided to modify the title and text of the Inadmissibility Decision adopted on 9 January 2017 in order to maintain the complainant's confidentiality.



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The Human Rights Review Panel sitting on 9 January 2017 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member

Mr Guénaél METTRAUX, Member

Ms Elka ERMENKOVA, 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 5 March 2014.
2. The complaint was communicated to the Head of Mission (“HoM”) on 25 June 2014.
3. Observations were received from the HoM on 10 November 2014. They were communicated to the complainant on 17 November 2014.
4. Further observations were received from the complainant on 18 November 2014.
5. On 8 October 2015, the Panel sought certain clarifications from the complainant. Responses to those queries were received by the Panel on 13 October 2015.
6. On 15 October 2015, the Panel sought further observations from the HoM in regard to submissions made by the complainant. The HoM’s observations in response were received on 16 November 2015. These observations were communicated to the complainant on 24 November 2015.

II. THE FACTS OF THE CASE

7. The facts of the case as submitted by the complainant can be summarised as follows: The background to the present matter pertains to the murder of the complainant’s brother sometime in 1999. Following the commission of that crime, the complainant effectively sought to investigate the matter and identify those behind the murder of his relative. In that context, he undertook to meet with various individuals thought to be associated with this crime and provided information he collected to both the Kosovo police and to EULEX.
8. Starting in October 2011, the complainant was subject to various threats and acts of violence that seemingly relate to his efforts to investigate this case. He reported those to the Kosovo police and to EULEX and was formally interviewed by a EULEX Prosecutor in relation to this matter.
9. On 19 November 2012, the complainant was interviewed by an EULEX Prosecutor in relation to this case.
10. In a Decision of 10 December 2013, the Basic Prosecution Office in Peja noted that the local Police undertook some investigative steps in the matter, including the interviewing of several (unspecified) persons and locating the grave of the complainant’s brother (P.S.). It was further determined that the victim was found to have died at the end of June 1999.

11. On 27 December 2012, based on a request for international legal aid, the son of the deceased was interviewed by a pre-trial judge in Montenegro. The son of the deceased stated that on an unspecified date in 1999 his father was taken by "H." and three other men. He never saw his father again.
12. On 28 December 2012, a EULEX Prosecutor rendered a decision for the initiation of an investigation into this case. The submitted decision specifies that the "*Prosecution and Police have interviewed about 16 witnesses. However, they did not provide very important information about the perpetrator of the criminal offense. Most of the witnesses have told that they have not been in Kosovo during the time when [P.S.] was murdered and/or have stated that they have only heard rumors about the death of [P.S.]. A witness told that he had seen that [P.S.] was taken by some men, allegedly with KLA uniforms, but the witness stated that he did not know those men.*" The "*Prosecution and Police*" also interviewed the suspects H.D., A.G., B.K., and R.Q. All of them denied any involvement in the murder of [P.S.]. The suspect N.G. was not interviewed, as he does not live in Kosovo. In addition, the decision states that the Police and Prosecution applied a number of covert measures, including wire-tapping.
13. The complainant submits that he informed the EULEX Prosecutor and the Kosovo Police on an unspecified date in May 2013 that he was about to meet a certain B.K, Q.K. and N.I. Allegedly, when meeting these individuals, the complainant was threatened "*that he must forgive the blood to the neighborhood*" in order to stop the continuation of blood feuds and that he will never be able to "*live in Peja if somebody from the neighborhood goes to jail*". Further, he was allegedly told that there is no need to know who carried out the murder. The complainant submits that despite informing the EULEX prosecutor and the police, no covert measures were taken in regard to this meeting that would have shed light on the murder of his brother, as those attending the meeting allegedly knew the identity of the killer of the complainant's brother.
14. In the course of the investigation, the body of [P.S.] was located and exhumed and upon the request of the EULEX Prosecutor a DNA sample was taken that confirmed that the mortal remains were those of [P.S.]. Further, the autopsy confirmed as cause of death gunshots to the chest.
15. Taking into account all collected evidence, the EULEX Prosecutor decided that there was not enough evidence to substantiate a charge against the suspects. The EULEX Prosecutor also took the view that there was no reasonable chance in the circumstances to obtain additional evidence to shed light on this case. Therefore, the EULEX Prosecutor decided to terminate the investigation.

III. THE COMPLAINT

16. The tenor of the complaint may be summarised as follows:
- i. At an unspecified date in 1999, the complainant's brother was murdered in circumstances that remain generally uncertain. As a result of the investigation, the body of his brother was found and it was determined that he had died from gunshots. The complainant alleges that the investigation into the killing of his brother was inadequate. He further submits that the decision taken by the Basic Prosecution in Peja to terminate that investigation was a violation of his rights.
 - ii. The complainant was subjected to a series of threats coming from individuals whom he associates with the murder of his brother. The complaint appears to regard EULEX as being responsible for not doing enough to stop those threats or to investigate them.
 - iii. He further complains that a certain property was acquired illegally by individuals associated with the murder of his brother.

Each aspect of the complaint will be addressed in turn below.

IV. THE LAW

Submissions of the parties

17. The complaint does not specifically point to a particular fundamental right that he says was violated, nor does he identify any human rights provision on which he seeks to rely. However, based on the nature of his complaint, it is apparent that the following Article of the European Convention on Human Rights ("the Convention") might be said to be relevant here: Articles 2, 3, 8 and 13 of the Convention. In addition, reference to Article 1 of Protocol no 1 to the Convention might also be implied from the complainant's submissions.
18. The position of the HoM in relation to these is also laid down in some detail below insofar as relevant to the resolution of this case.

The Panel's assessment

General considerations regarding admissibility of complaints

19. 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.

20. Before considering the complaint on its merits, the Panel has to decide whether to accept the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
21. 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.
22. Further, pursuant to Rule 25, paragraph 3, of the Panel's Rules of Procedure, a complainant is required to file a complaint within six months from the act, decision or conduct which is said to amount to or involve a violation of his/her rights (see, e.g., *Gashi against EULEX*, no. 2013-22, 7 April 2014, § 10; *Thaqi against EULEX*, no. 2010-02, 14 September 2011, § 51; *Sadiku-Syla against EULEX*, 2014-34, 29 September 2014, §§ 40 *et seq*).

Adequacy of investigation into the circumstances of the killing and termination of the investigation

23. This part of the complaint is being considered in light of Articles 2, 8 and 13 of the Convention and, in particular, the procedural obligations attaching to Article 2.
24. The brother of the complainant, [P.S.] was murdered sometime in 1999 in circumstances that have not been fully elucidated. The complaint alleges that the victim was murdered "only because he was a catholic".
25. The complainant has given the names of individuals whom he suspects of involvement in the killing, the names of potential witnesses and other information pertaining to that incident. This information was given to both local authorities and EULEX Prosecutors. On that basis, the complainant appears to suggest that, having been informed of the identity of potential suspects, EULEX did not do enough to investigate the matter and bring them to justice. On 10 October 2012, the complainant sent a "letter of complainant" to EULEX Prosecutors regarding what it considered the Mission's investigative failures. In response, he was interviewed on 19 November 2012 by a EULEX prosecutor in charge of the case.
26. The HoM describes a number of subsequent investigative steps that were taken by both EULEX and the local police:
 - As noted, on 19 November 2012, the complainant was interviewed by a EULEX prosecutor in relation to the case.
 - A number of other people were interviewed by the police about the case.
 - The Kosovo police located the grave of [P.S.] and established the cause of his death.

- On 25 January 2012, the Kosovo police interviewed an individual regarding the discovery of the body of the victim.
 - On 26 January 2012, another witness was heard by the police about the same matter.
 - On 27 December 2012, pursuant to a request for international legal assistance, the son of the victim was interviewed by a Judge in Montenegro.
 - On 28 December 2012, an EULEX Prosecutor filed a ruling on initiation of investigations against a number of suspects.
 - Thereafter, EULEX Prosecutors issued 12 letters of entrustments to Kosovo Police based on which 12 police reports were filed in 2013.
 - In 2013, the EULEX Prosecution filed two requests for international legal assistance (to Sweden and Montenegro).
 - The EULEX Prosecution also filed a request and the Court issued an order on 4 February 2013 authorising the exhumation of the body of the victim in order to conduct an autopsy. An autopsy report was prepared on that basis and the cause of death was established to be gunshots to the chest.
 - Starting in January 2013, the police and prosecutor also implemented 11 covert measures, including phone interceptions, covert surveillance and recordings with a view to obtain relevant information about the case. It is apparent from the record that EULEX assisted with at least some of these measures.
 - On 14 March 2013, the Kosovo police announced a reward for information on the case.
 - On 30 April 2013, the complainant was interviewed again.
 - On 18 June 2013, EULEX Prosecution made contacts with the authorities in Montenegro to obtain the statement of a particular witness and to obtain access to a particular case file. The request for assistance was granted and relevant information provided.
 - On 27 June 2013, a EULEX Prosecutor authorised the detention of two suspects. Listening devices were placed in their cells. The measure, which proved unfruitful, was terminated the next day.
 - In 2013, EULEX also interviewed two witnesses and two suspects, whilst the Kosovo police interviewed six witnesses and four suspects.
27. On 10 December 2013, after review of the file, the case was formally terminated. The HoM indicates that the decision was taken due to the insufficiency of the evidence regarding the general circumstances of the victim's killing or against any of the suspects. The HoM also points out that EULEX prosecutors only came to be involved in the case 12 years after the killing in question. The HoM concludes that the Mission took all relevant investigative steps in this matter and cannot be said to have violated the rights of the complainant.
28. The Panel notes the high degree of coordination between EULEX and local authorities in relation to this case. Whilst the Mission cannot of course delegate its human rights obligations to others, it is certainly operationally possible for the Mission to coordinate its investigative efforts with the local authorities rather than acting alone or letting the local authorities conduct it all on their own. The Panel cannot therefore

criticise the decision of the Mission to share the investigative burden over this case with local authorities.

29. In evaluating the conduct of the Mission in this matter, the Panel has taken into consideration the entirety of the investigative record of this case with a view to determine whether the Mission's conduct falls short of what was expected of it from the point of view of human rights law.
30. As a preliminary matter, the Panel would underline that the investigation of this case would have been extremely complex in the circumstances. EULEX only got involved in the matter almost twelve years after the crime. Forensic evidence had all but gone by then. Eye-witnesses to the killing were not available. Suspects could not be clearly implicated in the killing.
31. The Panel also notes that the Mission (in cooperation with local authorities) took a large number of investigative steps in this case and invested both significant time and resources in trying to resolve this case. The Panel sympathises with the complainant's distress and frustration that the case has not been resolved and the killers brought to trial. The Panel cannot find, however, that this is the result of an act or culpable omission attributable to the Mission. Instead, the Panel has satisfied itself that the Mission's conduct in this case was operationally consistent with its human rights obligations.
32. In conclusion, the Panel has taken the view that the Mission did not violate the rights of the complainant in the context of its involvement in the investigation of this case.

Threats and protection of the complainant

33. This part of the complaint is being considered pursuant to Article 3 of the Convention.
34. The complainant makes reference to a number of incidents where he said he received threats from certain individuals thought to be connected to the death of his brother.
35. In particular, the complainant refers to an incident on 15 October 2011 when he was threatened by an individual whom he associates to the killing of his brother. This case was brought to the attention of EULEX on 10 October 2012. First, this incident falls beyond the six-month time limit to file a complaint with the Panel and is therefore inadmissible for that reason alone in accordance with Rule 29(1)(c), in conjunction with Rule 25(3), of the Panel's Rules of Procedure. In any case, there is no indication on the record that EULEX ever became responsible for investigating this incident. On the contrary, the HoM notes that the incident was reported to a police station in Pristina and the case was then forwarded to Peja police for further actions. The HoM has further indicated that EULEX Prosecution contacted the Peja Basic

Prosecution office and was told that the matter was still being investigated. The HoM says that this case was never actually subject to a EULEX investigation but that it remained at all times within the competence of the local police. The Panel has no reason to question the validity of this assertion.

36. The complainant also refers to a meeting in May 2013 when he was subjected to further threatening behaviour by third parties believed to be associated with the killing of his brother. Once again, these incidents fall beyond the six-month time limit set for the filing of a complaint before the Panel and are therefore inadmissible on that basis alone. Furthermore, whilst the complainant suggests that EULEX prosecutors (and Kosovo police) were informed of this incident, he fails to establish that EULEX became responsible for investigating it. The HoM further points out that this incident was brought to the attention of the local Basic Prosecution Office by the Kosovo police and believes that this has been considered a “follow-up to the ‘threat case’ already opened” by the local authorities.
37. Reference is also made to an undated incident of threats which the HoM made mention of and which is said to have occurred in Greece. Upon being notified of this incident, a EULEX Prosecutor advised the complainant to report the matter to the Greek police – which he failed to do. This incident is not substantiated enough for the Panel to make a definite finding on it. In any case, there is insufficient evidence to suggest that such an incident, if it occurred, would come within the responsibility of EULEX.
38. Finally, the Panel notes the HoM’s submission that EULEX Prosecution did not consider itself competent to deal with “threat cases” pursuant to Law No. 03/L-053 unless they were hate-motivated as provided for under Article 11. Because of what has been said above, the Panel need not decide whether the threats relevant to the present case would come within the scope of the “hate-motivated” exception. The Panel notes, however, the claim of the complainant that the victims might have been targeted because they were of the Catholic faith. The Panel also notes that EULEX competence over this case could have been inferred from the connection that exists between the incident of unlawful killing (over which EULEX Prosecution could have exercised competence) and the threats associated therewith. However, considering that the matter continues to be dealt with by the local authorities without any suggestion that they are doing so ineffectively, the Panel need not determine whether the Mission should have exercised its “exceptional” competence over that case.
39. Despite the above, it is apparent from the record of this case that the killing of his brother has created a potentially unsafe environment for the complainant. The Panel is particularly concerned by the absence of clear information regarding the risk-assessment conducted in this matter and by the fact that the complainant was never granted any

protective measures despite having provided sensitive information about the case.

40. In light of the fact that the investigation of these threats is still on-going before the local authorities, the Panel need not decide whether the case should now be taken over by the Mission in the exercise of its “exceptional” powers under Article 7(A) of the amended Law on Jurisdiction. However, and with a view to guaranteeing the effective protection of the complainant’s rights, which is the overarching obligation of the Mission, the Panel invites the HoM to consider the possibility of asking EULEX Prosecutors to communicate with their local counterparts with a view to ascertaining whether their investigation of these threats is still on-going and whether certain measures should be taken to guarantee the safety and well-being of the complainant. This would enable the Mission to ensure that the rights of the complainant are being effectively protected and place the Mission in a position to determine whether to take over the responsibility of this investigation.
41. The Panel also notes with approval the HoM’s undertaking that it would provide the Head of Strengthening Division with relevant information about this case.
42. Based on the above, the Panel find this part of the complaint to be inadmissible.

Issues pertaining to property

43. This part of the complaint is being considered pursuant to Articles 8 and 13 of the Convention as well as Article 1 of Protocol 1 to the Convention.
44. The complainant also submits that property that belonged to his deceased brother was illegally purchased on 12 July 2002 based on fake or falsified documents. It is not entirely clear from the complainant why the complainant suggests that the Mission could be held responsible in relation to this matter.
45. First, the Panel is unable to satisfy itself that the complainant was a “victim” of the acts described above as would be necessary to grant him standing to raise this matter before the Panel (regarding the status as “victim” of the complainant, see *Mustafa-Sadiku against EULEX*, 2014-41, 15 June 2015, par 14; *I against EULEX*, 2013-01, 27 November 2013, at pars 17-22; *Emerllahu against EULEX*, 2012-15, 8 April 2013, pars 10-13). The property was not his own, nor does human rights law provide for the general possibility for the relative of a deceased to bring a claim pertaining to property rights on behalf of the deceased. In these circumstances, it is doubtful that the complainant is competent to bring this matter before the Panel absent a clear demonstration that he is a victim of the impugned action.

46. Secondly, and in any case, the incident to which the complainant refers occurred more than 12 years before the complaint was filed so that it fails to satisfy the six-month time limit set by Rule 29(1)(c), in conjunction with Rule 25(3) of the Panel's Rules of Procedure ("Complaints must be submitted to the Panel within six months from the date of the alleged violation."). As such, it is inadmissible pursuant to the said Rules.
47. Thirdly, even if the complainant had standing in relation to these matters, the Panel notes that, at the request of a EULEX Prosecutor, the Kosovo authorities looked into this matter and determined that the purchase of the property had been lawful. On the basis of information before the Panel, the complainant's claim of unlawful transfer of property has therefore not been established and the associated claim of rights violation remains unsubstantiated.
48. Finally, to the extent that EULEX was involved into this particular aspect of the case, the complainant has failed to point to any act or culpable omission attributable to the Mission that could be said to amount to a violation of his rights.
49. The complainant also refers to damage allegedly done to his property and "property line" which, he says, he reported to the local police. In regard to this incident, there is no indication that it would have occurred within the six months preceding the complaint. Instead, from the HoM's submissions, it would appear that this incident might have taken place on 19 August 2013, i.e., outside of the six-month time limit set under Rule 29(1)(c) in conjunction with Rule 25(3) of the Panel's Rules.
50. Even if this incident had taken place within the relevant six-month period, there is no indication that EULEX had any part in investigating this incident or that it can be faulted in that regard. The HoM concedes that the Mission was notified of the incident but notes that facts pertaining to that incident were reported "very confusingly". The view appears to have been taken within the Mission that this case fell, like other incidents linked to this case, within the competence of the local authorities. The complainant has failed to establish that the Mission acted arbitrarily or unreasonably in coming to that view.
51. For the reasons stated above, the Panel finds this part of the complaint to be inadmissible.

Issues pertaining to a third party

52. The complainant also alleges that the rights of the son of the deceased were violated (in particular his right not to be subject to torture and other forms of mistreatment). The complainant appears to base that suggestion on the fact that information which that person gave to the authorities was not adequately investigated.

53. The Panel has considered this part of the complaint in light of Articles 3 and 13 of the Convention.

54. The Panel has not been satisfied that the complainant may be regarded as a “victim” of the acts affecting the son of the deceased. Nor has he provided the Panel with any document authorising him to act on anyone else’s behalf in this matter. He therefore has no standing to raise this issue on behalf of his relative.

55. This part of the complaint is therefore not admissible.

FOR THESE REASONS,

Unanimously holds that, pursuant to Rules 25(3) and 29(1)(c)-(e) the complaint is inadmissible.

Despite this finding, in the exercise of its inherent discretionary authority the Panel

Invites the HoM to consider the possibility to ask EULEX Prosecutors to communicate with their local counterparts with a view to ascertaining whether their investigation of these threats is still on-going and whether appropriate measures should be taken to guarantee the safety and well-being of the complainant.

For the Panel,

John RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member