



INADMISSIBILITY DECISION

Date of adoption: 15 January 2013

Case No. 2012-08

Mufail Halili

Against

EULEX

The Human Rights Review Panel sitting on 14 and 15 January 2013 with the following members present:

Ms. Magda MIERZEWSKA, Presiding Member
Ms. Verginia MICHEVA-RUSEVA, Member
Mr. Guénaél METTRAUX, Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Joanna MARSZALIK, Legal Officer
Mr. Florian RAZESBERGER, 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 29 June 2012.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, may be summarised as follows.

Criminal proceedings against the complainant

3. On 11 March 2009, the Prizren District Prosecutor charged the complainant with the murder of his wife L.H. and H.S., his brother in law.
4. On 2 June 2010, the District Court of Prizren, sitting as a panel of three judges, convicted the complainant as charged and sentenced him to thirty years' imprisonment.
5. On 9 June 2011, a panel of the Supreme Court composed of five judges dismissed appeals brought by the District Public Prosecutor, the victims' families and the complainant and upheld the first instance judgment.
6. Upon subsequent appeal brought by the District Public Prosecutor and the victims' families, on 15 March 2012, the Supreme Court sitting as a panel of five judges amended its previous judgment and sentenced the complainant to forty years' imprisonment. The complainant's appeal was dismissed.

Custody of the complainant's children

7. The complainant maintains that he is a biological father of seven children, two of them (S.H and A.H.) with his deceased wife, and an adoptive father to her daughter. It appears that during the time preceding the death of the complainant's wife, A.H. and the complainant's four other children from his first marriage lived with him, while S.H. lived with her mother. It is not clear who had the custody of the remaining children.
8. On 28 October 2008, the Municipal Court in Prizren granted custody in respect of A.H. to the complainant's wife, L.H. After L.H.'s death and the complainant's arrest, A.H. was placed in a shelter in Pristina. The complainant maintains that his first wife took the other four children to live with her in Albania. He submits that they live in very poor conditions and that their mother is not capable of taking proper care of them. The complainant also claims that he has requested numerous Kosovo institutions, including the Ministry of Labour and Social Welfare, the Ombudsperson and the Council for the Defence of Human rights and Freedoms to help him bring the children back to Kosovo and to provide institutional care for them, but to no avail.

Alleged Ill-treatment in prison

9. On an unspecified date the complainant was arrested and remanded in the Correctional Centre in Dubrava. He submits that he was abused

by other detainees and the staff. On 1 May 2009, he was transferred to the Detention Centre in Gjilan.

10. After his 5 May 2010 conviction the complainant was again placed in the Correctional Centre in Dubrava on 31 July 2010. He submits that he was again verbally abused by the staff and other prisoners. The complainant also maintains that living conditions in the Dubrava prison were very poor.
11. On 03 September 2009 the complainant was transferred to Gjilan Detention Centre, where, as he claims, he was repeatedly verbally abused by one of the prison guards.
12. On 1 October 2011 the complainant was transferred to the prison in Lipjan and then again to Dubrava. He complains that while in Dubrava he was mistreated by a warden, but failed to provide any details.
13. On 25 May 2012 the complainant was moved to the Detention Centre in Peja. He maintains that he was subjected to a detainee regime, even though he had already been convicted. He complains that he was forced to spend twenty two and a half hours a day in his cell with other inmates and was only allowed one 15 minute phone call a week, monitored by a prison guard. On an unspecified date the complainant was again transferred to the Dubrava prison.
14. The complainant has sent numerous complaints to various institutions, including the Minister of Justice, the Head of EULEX Justice Component, the Ombudsperson, the President of Kosovo complaining about the alleged violations of his rights. He also says that he has filed a criminal charge with the Chief EULEX Prosecutor. No details or relevant documents have been provided.

III. COMPLAINTS

15. The complainant alleges that he was unfairly convicted and requests a retrial.
16. He further complains that his four children have not been given protection by the authorities. He relies on the International Convention on the Rights of the Child.
17. The complainant also invokes the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) and submits that he has been subjected to psychological torture while in prison and complains about poor living conditions in Kosovo prisons and detention centres.

IV. THE LAW

18. 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.
19. 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.

Unfairness of the criminal proceedings against the complainant

20. The Panel notes that the complainant's grievance relates, in essence, to the outcome of court proceedings against him and his allegedly unfair conviction.
21. According to Rule 25, paragraph 1 of the Rules of Procedure, based on the accountability concept in the OPLAN of EULEX Kosovo, the mandate of the Panel does not authorise it to review neither administrative nor judicial aspects of the work of Kosovo courts. Those are within sole competence of the Kosovo courts (see, for instance, HRRP cases nos 2012-03, *Dobruna against EULEX*, §12 and 2011-06, 2012-05, *Pajaziti against EULEX*, § 9. The decisions of Kosovo courts are subject to appeals and the extraordinary legal remedies available under the applicable law (see, inter alia, HRRP case no. 2011-01, *Dedë Gecaj against EULEX*, § 51).
22. In any event, the Panel notes that the complainant's submissions do not disclose any appearance of unfairness of the proceedings at issue. The complainant, when challenging the fairness of the proceedings, does not allege any specific procedural shortcomings with respect to his right to a fair hearing on the part of the judicial authorities. His complaints are limited to an objection to the substance of the decisions given by these authorities in his case and the errors of fact and law allegedly committed by them. He essentially contests the outcome of the criminal proceedings against him.

Custody over the complainant's children

23. As regards the complaint concerning the situation of the complainant's children from the first marriage, the Panel notes that the overall executive mandate of EULEX does not cover activities of a judicial or administrative character with respect to child custody and social welfare. Hence, the issues raised by the complainant do not fall within the ambit of the executive mandate of EULEX Kosovo and, consequently, fall outside the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo. In any event, even assuming that the complainant has demonstrated to the Panel's satisfaction that he has formal authority to act on his children's behalf, no cogent arguments have been submitted to the Panel to convince it that in the circumstances of the case the best

interests of the children would be served by them being taken from the care of their family and placing them in institutional care.

Alleged ill-treatment in prisons and detention centres

24. The complainant also submits that he has been subjected to psychological torture while in prison, in violation of the Convention on Torture. The complaint also falls to be examined under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) which reads as follows:

Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

25. The Panel first observes that it can only examine complaints lodged within six months from the date of the alleged violation as set out in Rule 25 paragraph 3 of the Rules of Procedure. When examining this part of the present complaint, the Panel shall therefore exclude from its considerations any alleged violations of the complainant's rights which might have occurred prior to 30 December 2011.

26. In so far as the complainant may be said to relate to events posterior to that date, the Panel observes that it has not been argued, let alone shown, in the present case that EULEX has been in any way involved in the alleged violations.

27. In any event, the Panel further observes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (ECHR, *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 162, or, among many other authorities, *Iwańczuk v. Poland*, no. 25196/94, § 50, 15 November 2001). It further reiterates that, within the meaning of the Convention against Torture "the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" (Article 1). According to the case law of the European Court of Human Rights torture constitutes "deliberate inhuman treatment causing very serious and cruel suffering" (see, among many other authorities *Selmouni v. France* [GC], no. 25803/94, § 96, ECHR 1999-V). Similarly, Article 165 of the PCCK defines torture as "any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person". However, the Panel observes that the complainant does not provide any details which would allow it to conclude that the treatment he has been subjected to amounts to inhuman or degrading treatment within the meaning of Article 3 of the European Convention, let alone to torture within the meaning of the same provision or within the meaning of Article 1 of the Convention against Torture, or Article 165 of the PCCK.

28. The Panel further notes that the procedural obligation for EULEX to investigate alleged violations of Article 3 of the Convention may arise in certain circumstances. Namely, article 3.3. of the Law no. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (the Law on Jurisdiction) enumerates criminal offences triggering the competence of EULEX prosecutors, among them torture (as defined in Article 165 of the Provisional Criminal Code of Kosovo (PCCK)). The Panel reiterates that, under Article 12 of the Law on Jurisdiction, EULEX prosecutors have the authority to take over an investigation or prosecution of any criminal offences, in case Kosovo prosecutors are unwilling or unable to perform their duties and this unwillingness or inability might endanger the proper investigation or prosecution. For that possibility to arise, however, the case would have to be first referred to a local public prosecutor. If then a local prosecutor was unwilling or unable to deal with the case, the complainant could notify the Chief EULEX Prosecutor, who would then decide whether to assign the case to another Kosovo public prosecutor or to an EULEX prosecutor. The Panel observes that the complainant has not shown that he brought his grievances to the attention of the Kosovo prosecuting authorities.
29. It follows that the present complaint falls outside the ambit of the executive mandate of EULEX Kosovo and, consequently, outside of the competence of the Panel, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint and 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

Magda MIERZEWSKA
Presiding Member