



INADMISSIBILITY DECISION

Date of adoption: 15 November 2012

Case No. 2011-28

Y.

Against

EULEX

The Human Rights Review Panel sitting on 15 November 2012 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 12 December 2011. The complainant asked for his name to be withheld as he was afraid of the repercussions which he or his family might suffer should his identity become public.
2. On 5 June 2012, the Panel decided to give notice of the complaint to the Head of Mission (hereafter the HoM) of EULEX Kosovo, inviting him to submit written observations on the complaint. The Panel also decided to examine the merits of the application at the same time as its admissibility (Rule 30 §§ 1 and 2 of the Rules of Procedure of the Panel, hereafter ROP).
3. The observations of the HoM were received on 14 September 2012. They were subsequently communicated to the complainant for additional observations.
4. On 4 October 2012, the complainant submitted his additional observations which were forwarded to HoM for information. No further observations were requested.

II. THE FACTS

5. The facts of the case, as submitted by the parties, can be summarized as follows.
6. The complainant was a EULEX international staff member who, from 2002 to 2009 worked in Kosovo, seconded first with UNMIK and thereafter with EULEX.
7. In 2008, when working at the Pristina airport, the complainant noticed that a passenger had collapsed on the apron of the airport. This person was later believed to have donated an organ in an illegal operation of organ harvesting operation.
8. Subsequently criminal proceedings concerning allegations of illegal organ transplants (the so-called "Medicus case") were instituted. At first, the case was investigated by UNMIK, but was later taken over by EULEX. A criminal case related to that matter is currently pending before the District Court of Pristina.
9. On an unspecified date the complainant, through his wife who was also a EULEX employee, informed the leading EULEX prosecutor about information he had acquired as a result of the incident referred to above (see paragraph 7) and offered his assistance in establishing the facts of the case. He gave the prosecutor his contact details.

10. On 14 February 2011 the EULEX prosecutor contacted the complainant who had in the meantime returned to his home country and asked him to give a witness statement. The complainant declined to do so, arguing that he feared for the safety of his wife and children who were still living in Kosovo. He promised, however, to answer any questions the investigators might have and provided them with a report on the incident that he had witnessed at the airport in 2008.
11. Subsequently, on an unspecified date, the EULEX prosecutor responsible for the case contacted the complainant's wife asking her for the complainant's contact details which he had apparently lost. The complainant maintains that the prosecutor also discussed the case and his involvement in it with Kosovo Albanian EULEX employees (presumably not involved in the investigation).
12. Having received the contact details from the complainant's wife, the prosecutor again contacted him asking for a witness statement but the complainant again refused to provide one.
13. On 12 June 2011 a newspaper in the complainant's home country published an article on the "Medicus case". It mentioned in passing that a EULEX employee had been present when the victim of organ trafficking had collapsed at the airport in 2008 (see paragraph 8 above). Neither the name, function nor nationality of the employee concerned had been given. No information was provided as to any other measures taken by EULEX subsequently in the proceedings with the involvement of that employee.
14. Subsequently, the prosecutor contacted the complainant several times asking for a statement (to be taken either in Kosovo or in the complainant's home country).
15. On 7 July 2011 the complainant was contacted by the Deputy Head of Mission, EULEX Kosovo undertaken on a number of occasions to provide protection measures for him and his family. The complainant also maintains that the prosecutor had also undertaken to provide witness protection for his and his family. Despite this, the complainant continued to decline to testify.
16. The criminal proceedings concerning the "Medicus case" started in October 2011 before the District Court of Pristina.
17. The complainant submits that on 7 November 2011 he was informed by the Deputy Head of Mission that his statement would still be welcome, but that he would not be compelled to give it.
18. The complainant submits that he has learned informally that his name is not on a witnesses' list in the witness context of the criminal proceedings referred to above and that no protection arrangements have been requested for him by the prosecuting authorities.

19. The complainant further claims that, as a result of these developments, his wife's health has deteriorated and she has been treated for depression and anxiety. She and her children left Kosovo and joined the complainant in his home country in late 2011, in order for her to obtain medical treatment.

III. COMPLAINTS

20. The complainant alleges violations of the European Convention on the Protection of Human Rights and Fundamental Freedoms ("the Convention"), in particular violations of the following provisions of the Convention:
 - i. Article 2 (right to life)
 - ii. Article 5 (right to freedom and security)
 - iii. Article 8 (right to private and family life)
21. He requests that EULEX be held responsible for failing to deal with his situation properly and for failing to ensure his security and that of his family.
22. He also requests that an investigation be carried out into an alleged information leak which allegedly led to the publication of the newspaper article mentioned above (see paragraph 13 above). The complainant claims that the article contained details that could only have been provided from within EULEX and which had made it possible to identify him and his role in the exposure of the case. He also maintains that the article caused great distress to his wife who feared for her safety and that of her children.

IV. THE LAW

Submissions by the parties

23. In his submissions, the HoM maintains that there has been no violation of the complainant's human rights. The complainant's personal details have been treated with care and his allegations about information leaks are unsubstantiated. The HoM further submits that the complainant is not a witness in the "Medicus case" and that procedures for witness protection could therefore not be applied to him.
24. In his response to those observations, the complainant reiterates his original statement that EULEX violated his human rights. He submits

that, even though he is currently not on the list of witnesses, he was requested to testify at the trial. Yet no risk assessment was carried out and no protection was provided for him and his family. He maintains that EULEX should have carried out an investigation to establish whether information had been leaked which was later published in the newspaper article to his prejudice. The complainant further asserts that EULEX's mishandling of the situation disrupted his family life, caused his wife's health problems and caused his family to leave Kosovo for security reasons.

The Panel's assessment

25. 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.
26. No observations were made by the parties with regard to the admissibility of the complaint.

Compliance with six-month time limit (Rule 25 par. 3 of the Rules of Procedure)

27. 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.
28. The Panel notes that the complaint effectively consists of two aspects: alleged violations of the complainant's rights resulting from the disclosure of certain information, allegedly originating from EULEX, in a newspaper article; and alleged violations resulting from the actions of EULEX prosecutors which, the complainant claims, resulted in compromising his safety and that of his family.
29. In so far as it could be understood that the alleged violations resulted from the actions or omissions of EULEX which had made possible the publication of the newspaper article, the Panel notes that the article was published on 12 June 2011. The case was lodged with the Panel on 12 December 2011.
30. As to the date *ad quem*, the European Court of Human Rights (ECHR) has found on many occasions that the six-month time-limit within which to file a complaint with that Court starts to run on the date following the date on which the final decision in a case has been pronounced in public, or on which the applicant or his representative was informed of it. Further, in situations where no remedy was available that time-limit was also held to begin on the date on which the act complained of took place or the date on which the applicant was directly affected by or became aware of such an act or had

knowledge of its adverse effects. As to the duration of the six-month period, it has been a consistent practice of the ECHR to find that it expires six calendar months later, regardless of the actual duration of those calendar months (see, *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002 and *Otto v. Germany* (dec.), no. 21425/06, 10 November 2009).

31. The Panel considers it appropriate to adopt as its own the approach developed by the EHCR as to the starting point, calculation and expiry of the six-month time-limit to submit the complaints to the Panel.
32. Accordingly, it finds that the present complaint was filed on the last day of the time-limit set in Rule 25 of its Rules of Procedure. He has therefore complied with the six-month time-limit laid down by this provision.
33. Regarding the second aspect of the complaint (see paragraph 28 above), only the actions attributable to EULEX, and having occurred after 12 June 2011, fall within the Panel's jurisdiction. When examining this part of the present complaint, the Panel shall therefore exclude from its considerations any action, in so far as it can be said to be attributable to EULEX that occurred prior to 13 June 2011.

Mandate of the Panel (Rule 25 par. 1 of the Rules of Procedure)

34. 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.
35. The Panel has already established that the actions of EULEX prosecutors or the police are part of the executive mandate of the EULEX Kosovo and therefore fall within the ambit of the Panel's mandate (see, for instance, *Lafit Hajan against EULEX*, no. 2010-06, decision of 14 September 2011).

Alleged violation of Articles 2 and 8 of the Convention

36. The complainant alleges that EULEX actions and omissions infringed Article 2 of the Convention protecting the right to life and its Article 8 guaranteeing the right to respect for private and family life. These provisions, in so far as relevant, read:

Article 2:

"1. Everyone's right to life shall be protected by law. (...)"

Article 8:

"1. Everyone has the right to respect for his private and family life (...)

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

37. The Panel reiterates that the first sentence of Article 2 enjoins the authorities not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, among other authorities, *L.C.B. v. the United Kingdom*, 9 June 1998, par. 36, Reports of Judgments and Decisions 1998-III).
38. In the same vein, the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities. Any interference under the first paragraph of Article 8 must be justified in terms of the second paragraph as being “in accordance with the law” and “necessary in a democratic society” for one or more of the legitimate aims listed therein. According to the Court’s settled case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities (see, among many other authorities, *Olsson v. Sweden* (No. 1), 24 March 1988, § 67, Series A no. 130). In addition, there may also be positive obligations inherent in effective “respect” for private life. These obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of relations between individuals, including the implementation, where appropriate, of specific measures (see, among other authorities, *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91).
39. In the present case, in so far as the complainant alleges a disclosure of information contained in the article resulting from the actions or omissions on the part of EULEX, the Panel observes that no evidence has been submitted to it to show that any information provided by the complainant to EULEX Prosecutors was given to any third party in violation of his rights. Nor has it been shown that there were leaks of confidential information concerning the complainant’s identity that would have been attributable to EULEX. In any event, the Panel observes that the impugned article about the “Medicus case” referred to the complainant and to the events of 2008 (see paragraph 7 above) only in a most general manner. It did not contain any personal or even circumstantial details allowing one to establish or even guess the identity of the person who witnessed one of the alleged victims’ fainting at Pristina airport. Furthermore, the complainant failed to refer to any circumstances or facts that would allow one to accept that any third parties identified him on the basis of the impugned article or that he had received any threats.
40. Hence, the Panel cannot accept that the information contained in that article originated from EULEX and amounted to an interference with the complainant’s rights or disclosed a lack of respect for his private or family life within the meaning of Article 8 of the Convention, let alone his and his family’s right to life protected by its Article 2.

41. In so far as the present complaint relates to the alleged failure on the part of the EULEX prosecutor to ensure the complainant's safety in connection with the ongoing criminal proceedings in the "Medicus case", the Panel first observes that at no point in time was the complainant compelled to testify in the proceedings. His refusals to do so when requested were respected by EULEX. The Panel has already found that it has not been shown that the applicant's identity or whereabouts were disclosed to the public (see paragraph 39 above). Hence, the Panel does not find that the complainant established that any action or failure to act on the part of the EULEX prosecution authorities compromised the safety and security of the complainant or that of his family, let alone that at any point their lives were at risk. In so far as the complainant submits that his wife's health suffered as a result of the circumstances complained of and attributable to EULEX, the Panel notes that he has not produced any medical evidence pertaining to her condition or treatment.
42. It follows that this part of the complaint is manifestly ill-founded within the meaning of Article 29 (d) of the Panel's Rules of Procedure

Alleged violation of Article 5 of the Convention

43. In so far as the complainant relies on Article 5 of the ECHR, the Panel reiterates that the right to "liberty and security of person" does not create an obligation on the part of authorities to give an individual protection from others (see *X v. Ireland*, no. 6040/73, European Commission of Human Rights, decision of 20 July 1973). Article 5 of the Convention is concerned with arbitrary interference by a public authority with an individual's personal liberty and his or her freedom from arrest and detention (see, e.g. *East African Asians v UK*, no. 4626/70 et al., Commission's report of 14 December 1973, Decisions and Reports 78; *X v. UK*, no. 5877/72, European Commission of Human Rights decision of 12 October 1973). No such interference is alleged or proven in the present case.
44. In the light of the above, this part of the complaint is also inadmissible as being manifestly ill-founded within the meaning of Rule 29 (d) of the Panel's Rules of Procedure

FOR THESE REASONS, THE PANEL, UNANIMOUSLY

finds the complaint manifestly ill-founded within the meaning of Rule 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