



INADMISSIBILITY DECISION

Date of adoption: 30 August 2013

Case No. 2012-17

E

Against

EULEX

The Human Rights Review Panel sitting on 29 and 30 August 2013 with the following members present:

Ms. Magda MIERZEWSKA, Presiding member
Mr. Guénaél METTRAUX, Member
Ms. Katja DOMINIK, 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 23 October 2012.

II. THE FACTS

2. On 10 February 2012, an EULEX Prosecutor initiated an investigation against the complainant for an alleged criminal offence of accepting bribes and against two other suspects on allegations of bribery. On 27 March 2012, the investigation was expanded to include a charge of abuse of official position against the complainant and for trading in influence against two other suspects.
3. On 27 March 2012, the pre-trial judge issued an arrest warrant against the complainant and two fellow suspects.
4. On 2 April 2012, the complainant was arrested.
5. On the same day, the prosecutor asked the Pejë/Peć District Court to order the detention on remand. The prosecutor argued that there was a strong suspicion that the complainant had committed serious criminal offences and that there was a possibility that he might attempt to abscond or interfere with the course of justice.
6. On 3 April 2012, the Pejë/Peć District Court ordered that the complainant be detained on remand for one month. The court considered that there was a strong suspicion that the complainant might have committed the criminal offences he was suspected of. Moreover, the Court found that, given the complainant's professional position, contacts and knowledge of investigative skills, there was a strong possibility that he might attempt to tamper with evidence or influence the injured party or witnesses.
7. On 2 May 2012, the complainant's detention was extended for three months until 2 August 2012.
8. On 31 July 2012, the prosecutor filed an indictment against the complainant and two other suspects with the Pejë/Peć District Court.
9. On 2 August 2012, the District Court prolonged the detention until 2 October 2012.
10. During the confirmation of charges hearing on 4 September 2012, the defendants asked the confirmation judge to examine the lawfulness of their detention. On 11 September 2012, the court found that their continued detention was lawful. On 24 September 2012, a panel of three judges dismissed the defendants' appeal against that decision.
11. The complainant's detention was again extended on 2 October 2012 until 2 December 2012. The court found that there was a justified suspicion that the complainant might have committed the criminal offences with which he was charged and that there were a real and substantial risk that the complainant might re-offend.

12. Subsequently, the complainant's detention was further extended until an unspecified date.
13. On 20 February 2013, the District Court ordered that the complainant be released from detention on bail and he was immediately released in accordance with that order.
14. On 23 May 2013, a three-judge panel of the Basic Court of Pejë/Peć convicted the complainant of two counts of abusing his official position and unlawful possession of a firearm. He received a sentence of five years of imprisonment and a fine of ten thousand euros. He was further prohibited from holding public office for a period of three years after his release. The complainant was immediately re-arrested. The complainant did not lodge an appeal against his conviction.
15. On 23 May 2013, the Pejë/Peć District Court also ordered that the complainant remains in detention until the final judgment was given in the case.
16. The complainant is currently imprisoned in the Prizren District Prison.

III. COMPLAINTS

17. The complainant alleges that his right to freedom and security guaranteed by Article 5 of the European Convention on Human Rights (the Convention) was violated, as he was unlawfully detained on remand; he alleges that his arrest and detention were politically motivated. He further claims that his detention pending appeal against the first instance judgment is also unlawful. He submits that he should have been released on bail as he claims the order of 20 February 2013 (see par. 13 above) is still in force. The complainant also invokes Article 2 of the Convention and claims that there were attempts to poison him whilst in detention.

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, par. 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.

The lawfulness of the complainant's detention

20. The Panel has already held that the actions of EULEX prosecutors taken within the context of criminal investigation are part of the executive mandate of the EULEX Kosovo and therefore fall within the ambit of the Panel's mandate (see, for instance, *Z against EULEX*, 2012-06, 10 April 2013, par. 32; *W against EULEX*, 2011-07, 5 October 2012 at par. 21).
21. Moreover, actions or omissions by EULEX prosecutors during the investigative phase of criminal proceedings are not to be considered, in principle, as forming part of "judicial proceedings" for the purpose of determining the Panel's competence (see *Thaqi v. EULEX*, 2010-02, 14 September 2011, par. 64). In this regard, the Panel held that "*the actions and omissions of EULEX prosecutors [...] before the filing of indictment may fall within the ambit of the executive mandate of EULEX*" (see *Thaqi v. EULEX*, 2010-02, 14 September 2011, par. 93).
22. Furthermore, it cannot be excluded that the Panel might be competent to evaluate the actions of EULEX prosecutors in criminal investigations even if they are subject to judicial review. The Panel would be competent to examine such acts and decisions, for instance, where the subject matter of acts and decisions subject to such review touches on human rights issues such as, for example, the right to personal liberty and security within the meaning of Article 5 of the ECHR. The Panel would only intervene if and where allegations of human rights violations attributed to the prosecutor have not been fully addressed by the competent judicial authorities (see *Z against EULEX*, 2012-06, 10 April 2013, par. 34).
23. As regards the present case, the Panel notes that the complainant challenges the decisions given by the courts in respect of his detention and the compatibility of these decisions with relevant human rights standards, in particular a right to personal liberty and security guaranteed by Article 5 of the Convention.
24. The Panel observes that all decisions regarding the complainant's detention were rendered by competent judicial authorities at the request of the prosecutor. The courts were given an opportunity to fully examine the prosecutor's arguments for the complainant's detention. Moreover, at least on one occasion, the decision was appealed against by the complainant and his appeal was examined by a panel of three judges who dismissed that appeal. The complainant has not identified any human rights issue that he was unable to raise with the court or that the court failed to properly address (see *Z against EULEX*, quoted above, par. 34).
25. The Panel has held on numerous occasions that, according to Rule 25, paragraph 1 of its Rules of Procedure, based on the accountability concept in the OPLAN of EULEX Kosovo, it has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. The fact that EULEX judges sit on the bench does not

detract from the courts the character as part of the Kosovo judiciary (see, *inter alia*, *Halili against EULEX*, 2012-08, 15 January 2013, par. 21; *Pajaziti against EULEX*, 2012-05, 4 October 2012 pars. 9-10; *Dobruna against EULEX*, 2012-03, 4 October 2012 par. 12; *Zeka against EULEX*, 2012-02, 4 October 2012 par. 21).

26. Consequently, having regard to the fact that the complainant's detention was imposed by the court and that its lawfulness was subsequently reviewed on appeal, the Panel lacks jurisdiction to examine complaints pertaining to the manner in which the Pejë/Peć District Court examined its lawfulness.
27. This aspect of the complaint will, therefore, not be reviewed by the Panel, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

Complaints under Article 2 of the Convention

28. As regards the complainant's allegation that there were attempts on his life while he was in detention, they are unsubstantiated. The Panel has not been provided with any information that would support this claim. There is also no indication that the complainant has ever complained to or requested Kosovo authorities or EULEX to investigate the matter.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY,

finds that the complaint falls outside of the Panel's jurisdiction 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