



INADMISSIBILITY DECISION

Date of adoption: 21 April 2015

Case No. 2014-31

K.P.

Against

EULEX

The Human Rights Review Panel sitting on 21 April 2015 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

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 June 2014. The complainant asked for his name to be withheld. The Panel granted his request.

II. THE FACTS

2. On 23 January 2011, the District Public Prosecutor of Pristina filed an indictment against the complainant and charged him with aggravated murder of his wife as well as unauthorised ownership, control, possession or use of weapons.
3. On 3 November 2011, the complainant asked the President of the Assembly of EULEX Judges to assign the case to an EULEX panel of judges. On 15 November 2011, the President rejected the request. He found that there were no reasons to believe that there would be a miscarriage of justice or unreasonable procedural delays as might have warranted the assignment of the case to EULEX Judges.
4. On 2 May 2012, the District Court of Pristina convicted the complainant and sentenced him to twenty-one years of imprisonment. Both the complainant and the prosecutor appealed against the judgment.
5. On 24 October 2012, the Supreme Court of Kosovo modified the first-instance judgment in some respects and upheld it for the remaining part and increased the complainant's sentence to twenty-seven years of imprisonment.
6. On 8 February 2013, the complainant filed a request for protection of legality as an extraordinary legal remedy with the Supreme Court. It was rejected as unsubstantiated on 30 September 2013.
7. On 20 September 2013, the complainant sent a request to the Special Prosecution Office of Kosovo (SPRK) asking for their intervention in this case. On 1 October 2013, the EULEX prosecutor and the Head of SPRK answered that EULEX had no authority to overrule or reverse decisions of the courts in Kosovo and declined to intervene.

III. COMPLAINTS

8. The complainant submits that the proceedings against him were unfair and that he was unjustly convicted. He also complains that his case was not taken over by EULEX.

IV. THE LAW

9. 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 (the Convention) 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.

10. Before considering the complaint on its merit, 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.
11. 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.
12. The Panel notes that the complainant's grievance relates, in essence, to the outcome of court proceedings against him and his allegedly unfair conviction.
13. The Panel reiterates that, as it has held on numerous occasions, according to Rule 25, paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot in principle review judicial proceedings before the courts of Kosovo. It has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Those are within the sole competence of the Kosovo courts (see, *inter alia*, *Shaip Selmani against EULEX*, 2014-23, 10 November 2014, §12; *Gani Gashi against EULEX*, 2013-22, 7 April 2014, § 11).
14. It follows that the complaint does not fall within the executive mandate of EULEX Kosovo. Therefore, the issue does not fall within the ambit of the Panel's competence, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo. Furthermore, the complainant has not placed before the Panel any credible evidence that could substantiate his claim of unfair treatment.
15. In so far as the complainant's grievance can be understood to concern EULEX's refusal to take over his case, and assuming that this decision would come within the Panel's jurisdiction, it would in any case be time-barred and therefore inadmissible for that reason. In accordance with Rule 25, paragraph 3, of the Rules of Procedure, complaints must be submitted within six months from the date of the alleged violation. The Panel notes that decisions of the President of the Assembly of EULEX Judges and the Head of the SPRK were given, respectively, on 15 November 2011 and 1 October 2013. The complainant filed his complaint 4 June 2014. The complaint does not therefore satisfy the admissibility criteria set out in Rule 29 of the Panel's Rules of Procedure. Furthermore, the complainant has not placed before the Panel any credible indication suggesting that EULEX's failure to take over his case resulted in a violation of his fundamental rights.

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, in any case, manifestly ill-founded within the meaning of Article 29 (e), and therefore

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member