



INADMISSIBILITY DECISION

Date of adoption: 15 June 2015

Case No. 2014-42

Bujar Zherka

Against

EULEX

The Human Rights Review Panel sitting on 15 June 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 9 December 2014.

II. THE FACTS

2. The following facts have been established from the material in the Panel's possession.
3. On 10 February 2012, the EULEX prosecutor initiated an investigation against R.Z. and X.Z. on suspicion of giving bribes. On the same day, the prosecutor filed a request for a search order of the premises used and owned by the suspects with the Municipal Court of Pejë/Peć.
4. On 14 February 2012, the EULEX pre-trial judge of the Municipal Court issued a search order, to be executed within 48 hours from its issuance.
5. It is not clear from the complaint when the search order was executed and what items, if any, were confiscated. A receipt of confiscation of a number of items belonging to a certain I.Z. and seized at the suspects' premises was issued by the Kosovo Police on 2 March 2012. It is not clear, however, when they were confiscated and in execution of what court order.
6. On 2 April 2012, the EULEX pre-trial judge of the Municipal Court, at the EULEX Prosecutor's request, issued another search order for the premises belonging to R.Z and X.Z.
7. On the same day, a number of items were confiscated from R.Z.'s and X.Z.'s premises. A receipt of confiscated items issued on 2 April 2012 indicated that they were the property of I.Z.
8. On 23 May 2013, the Basic Court of Pejë/Peć convicted R.Z., X.Z. along with two other defendants of trading in influence and incitement to abusing official position or authority.
9. On 6 June 2014, the Court of Appeals, sitting as a mixed panel of Kosovo and EULEX judges, partly amended the first-instance judgment. It also ordered that a number of items confiscated during the house search at the defendants' premises be returned.

III. COMPLAINTS

10. The complainant requests that the items seized during the search at R.Z.'s and X.Z.'s premises be returned to him.

IV. THE LAW

11. 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 which must be guaranteed by public authorities in all democratic legal systems.

12. 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.
13. 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.
14. The complainant submits that certain items belonging to him were confiscated, presumably during the search of R.Z.'s and X.Z.'s house and that they have not been returned to him. The Panel notes, firstly, that no specification of these items has been provided. Further, no documents have been provided to the Panel to prove the complainant's ownership of these objects. The search was carried out at the premises which, apparently, were not the complainant's property. The items on the two receipts of confiscation are listed as belonging to a certain I.Z., not to the complainant. Moreover, it would not appear that the complainant has taken any steps, apart from lodging the complaint with the Panel, to recover those objects. It has not been argued, let alone shown, that it would have been impossible for him or obviously futile to submit the matter to the courts. The Panel therefore considers that the complaint is unsubstantiated.

FOR THESE REASONS,

The Panel holds, unanimously, that the complaint is manifestly ill-founded within the meaning of Article 29 (e) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member