



INADMISSIBILITY DECISION

Date of adoption: 27 June 2016

Case No. 2015-09

Driton Hajdari

Against

EULEX

The Human Rights Review Panel sitting on 27 June 2016
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Elka FILCHEVA - ERMENKOVA, Substitute Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Joanna MARSZALIK, Legal Officer
Mr Paul LANDERS, 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 30 June 2015. Due to the resignation of Ms Katja Dominik as a Panel Member, she was replaced in the deliberations by Ms Elka Filcheva–Ermenkova, the

Substitute Member of the Panel, in accordance with Rule 14 par. 2 of the Rules of Procedure.

II. THE FACTS

2. On 17 December 2012, the District Court of Pristina convicted the complainant and four other co-perpetrators of aggravated attempted murder. The complainant was sentenced to seven years of imprisonment.
3. On 12 December 2013, upon the complainant's appeal, the Court of Appeals of Kosovo, sitting as a mixed panel of EULEX and Kosovo judges, amended the first instance judgment. The court credited the time which the complainant had spent in detention on remand toward the service of his term of imprisonment. The remainder of the District Court judgment was upheld.
4. The Supreme Court of Kosovo, sitting as a mixed panel of EULEX and local judges, rejected the complainant's further appeal as unsubstantiated on 3 September 2014.

III. COMPLAINTS

5. The complainant submits that he was wrongly convicted and protests his innocence. He also complains about unlawfulness of his detention on remand.

IV. THE LAW

6. 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.
7. 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.
8. 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.

9. The Panel notes that the complainant's grievance relates to the outcome of court proceedings against him and his allegedly unfair conviction.
10. 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, it 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. The fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, *inter alia*, *K.P. against EULEX*, 2014-31, 21 April 2015, § 13; *Shaip Selmani against EULEX*, 2014-23, 10 November 2014, §12).
11. 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.
12. In any event, the complainant has not placed before the Panel any credible evidence that could substantiate his allegation of unfair judicial proceedings.
13. In so far as the complainant's grievance can be understood to concern the alleged unlawfulness of his pre-trial detention, his complaint is unsubstantiated as the complainant failed to provide any evidence in support of his allegation.
14. The Panel has already held that it has jurisdiction to examine the acts and conduct of EULEX prosecutors in the context of criminal investigations. Its jurisdiction would cover such acts and conduct even when they were subject to a subsequent judicial review, if their subject matter touched on human rights issues, for example, the right to personal liberty and security within the meaning of Article 5 of the Convention. However, the Panel would only intervene if and when allegations of human rights violations attributed to the prosecutor have not been fully addressed by the competent judicial authorities (see, for instance, *Z against EULEX*, 2012-06, 10 April 2013, § 34). The Panel observes that in the present case the lawfulness of the complainant's detention was the subject of the judgment of the Court of Appeals. The court was therefore given an opportunity to fully examine its length and lawfulness. 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.

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 because it is unsubstantiated, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member