



INADMISSIBILITY DECISION

Date of adoption: 17 October 2017

Cases No. 2016-06 & 2017-04

Shpresim Uka

Against

EULEX

The Human Rights Review Panel sitting on 17 October 2017 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Elka ERMENKOVA, Member

Assisted by
Mr John J. RYAN, Senior 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 2016-06 was registered with the Panel on 27 April 2016. It was filed by Mr Shpresim Uka through his authorized representative, Ms Mirvete Uka.
2. The complaint 2017-04 was registered on 22 June 2017. It was filed by Mr Shpresim Uka personally.

3. Considering the extent to which issues raised by the two complaints overlap, the Panel hereby formally joins these two cases in accordance with Rule 20 of its Rules of Procedure.

II. THE FACTS

4. On 17 December 2012, the District Court of Pristina found the complainant guilty of aggravated murder in co-perpetration and for attempted aggravated murder in co-perpetration. The complainant was sentenced to 15 years of imprisonment. The case is known as "Bllaca 2". An EULEX judge sat on the bench.
5. On 12 December 2013, the Court of Appeals modified the judgment of the District Court of Pristina in part. It upheld the conviction of the complainant.
6. On 3 September 2014, the Supreme Court upheld the complainant's conviction.
7. On 2 February 2015, the complainant submitted a request for constitutional review of the Supreme Court's judgment to the Constitutional Court.
8. On 4 July 2016, the Constitutional Court declared the complainant's request inadmissible.
9. On 30 March 2016, the complainant submitted a request for initial investigation against a cooperating witness to the Special Prosecution Office of Kosovo. No investigation was instituted.
10. On 30 March 2016, the complainant submitted a request for review of the proceedings of the Basic Court of Pristina, Department of Serious Crimes.
11. On 6 July 2016, the Basic Court of Pristina, Department of Serious Crimes, issued a decision rejecting the complainant's request for reviewing the proceedings.

III. COMPLAINTS

12. The complainant alleges that there were many irregularities during his trial. Firstly, the Presiding Judge of the District Court was said to have lacked impartiality as he was said to have based an earlier judgment, in a trial known as "Bllaca 1", on the evidence of the same cooperative witness on which he relied to convict the complainant in the proceedings concerned in the present case.
13. Secondly, it is alleged that the facts of the case have not been established truthfully and completely. In particular, the complainant

criticises the assessment of evidence made by the court, especially as regards the reliability and credibility of the cooperative witness.

14. Thirdly, the complainant claims that he was not “treated equally” and that he had no reason to commit the crime in question.
15. With reference to the above, the complainant submits that his rights under Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms have been violated.
16. The complainant requests the Panel to review the judgment of the District Court, to initiate proceedings against the cooperative witness and asks for the case to be returned for trial.

IV. THE LAW

17. The complainant alleges a breach of Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms (right to a fair trial). This provision, in so far as relevant, reads as follows:

Article 6 Right to a fair trial

1. In the determination of [...] any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

[...]

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

[...]

18. 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 in the OPLAN of EULEX Kosovo 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.

19. Before considering the complaint on its merits, the Panel has to decide whether to proceed with it, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
20. 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. In accordance with its founding instrument, referred to above, Rule 25 further stipulates that the Panel is not competent to review judicial proceedings before the courts of Kosovo.
21. Regarding the requests (see, above, paragraph 16) that the Panel should review the criminal proceedings and the case should be returned to re-trial, or the judgment reviewed, the Panel notes that the complainant challenges decisions given by Kosovo courts and the compatibility of these decisions with relevant human rights standards, in particular with the procedural guarantees provided for by Article 6 of the Convention.
22. 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 in principle no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. The fact that, as in the present case, EULEX judges sit on the bench does not detract from the court in question forming part of the Kosovo judiciary (see, *inter alia*, *Rifat Kadribašić against EULEX*, 2014-09, of 10 November 2014, para. 11, *Shaban Kadriu against EULEX*, 2013-27, 27 May 2014, para. 17). The Panel is not competent, therefore, to deal with the present complaint.
23. Furthermore, the Panel notes that the complainant has failed to explain how the relief he is seeking (see, paragraph 15 above) would come within the ambit of the Panel's competence as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.
24. It follows that the issues raised by the complainant do not fall within the ambit of the executive mandate of EULEX Kosovo. Consequently, they are outside the Panel's competence, as formulated in Rule 25 of its Rules of Procedure and the OPLAN.
25. Furthermore, the Panel notes that the conduct complained of would seem to fall outside of the 6-month timeframe within which a complaint must be filed with the Panel (Rule 25(3) of the Panel's Rules of Procedure). The criminal proceedings in this case ended on 3 September 2014 when the Supreme Court issued its judgment. The present complaints were filed with the Panel on 27 April 2016 and 22 June 2017. They fall, therefore, outside the six-month time-limit set in the Rules. The Complainant has put forward no cogent reason why the Panel should nevertheless be competent to address his complaint.

The complaint would have to be declared inadmissible also for that reason.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, as it as it falls outside its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure and fails to comply with Article 25(3) of the Rules regarding time-limit for filing of a complaint, and therefore

DECLARES THE COMPLAINTS INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member