



INADMISSIBILITY DECISION

Date of adoption: 17 October 2017

Case No. 2016-07

Mentor Qela

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 was registered with the Panel on 4 May 2016.

II. THE FACTS

2. The facts of the case as submitted by the complainant can be summarised as follows:

3. On 24 August 2011, the Supreme Court of Kosovo upheld the conviction of the Complainant on two counts of “attempt aggravated murder” and “Unauthorized Ownership, Control, Possession or Use of Weapons” whilst modifying the sentence.
4. EULEX judges sat on the bench.

III. COMPLAINT

5. Present complaint has two main topics: the judicial proceedings and alleged mistreatment by the police.
6. As to the judicial proceedings, the complainant makes a number of allegations for which he provided no independently verifiable information: judges were influenced, had made up their minds from the start, and were motivated by an attempt to find those “behind him”; the alleged motive for the killing (material benefit of 300 euros) is not based on reality as the complainant comes from a good family and did not lack material means; he was framed and that the case is somehow related to IPKO tender and “powerful consortiums, of major powers”; a witness in the case is said to have been mentally ill; because the alleged organizer of the murder was released, the Court must per force have rejected the Prosecutor’s case as regards motive; the complainant was unable to defend himself properly and denied the opportunity to be heard; his counsel was allegedly denied a fair opportunity to participate and defend the complainant.
7. As to the alleged mistreatment of the complainant by the Police, he does not specify the dates of his detention but it can be inferred from the context that he refers to his pre-trial detention. He claims that while being in police custody he was mistreated and was refused medical care.
8. The complainant did not refer to any particular human rights as having been violated. However, from the substance of the complaint it appears that the complaint would pertain to the rights of the accused as guaranteed, inter alia, under Article 6 (fair trial) and Article 3 (protection against torture and inhuman or degrading treatment) of the European Convention of Human Rights (“the Convention”).

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 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 merits the Panel has to decide whether to proceed with the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
11. 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.
12. The Panel notes that the complainant's grievance concerns judicial proceedings that ended on 24 August 2011 with the issuance of the judgment of the Supreme Court, and pre-trial detention preceding these proceedings. The complaint to the Panel was lodged on 4 May 2016. It therefore falls outside the six-month time limit provided for in Rule 25 paragraph 3 of the Rules of Procedure. It follows that the complaint does not satisfy the admissibility criteria set out in Rule 29 of the Panel's Rules of Procedure.
13. In addition, in accordance with Rule 25, paragraph 1, of its Rules of Procedure, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel 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 fact that they are part of the Kosovo judiciary (see, *inter alia*, *Rifat Kadribašić against EULEX*, no. 2014-09, of 10 November 2014, para. 11, *Shaban Kadriu against EULEX*, 2013-27, 27 May 2014, para. 17).
14. Consequently, having regard to the fact that the Complainant's request concerns the judicial proceedings, the Panel lacks jurisdiction to examine his complaints.
15. Regarding the allegations of mistreatment by the Police, the Panel notes that the complaint does not allege that EULEX was in any way involved or informed of the matter. In those circumstances, no alleged violation of rights could be attributed to the Mission.
16. Finally, concerning both aspects of the complaint, as the Complainant offered no evidence to support and substantiate his claims, the Panel finds that the allegations have not been adequately substantiated by the Complainant and are therefore manifestly ill-founded.

FOR THESE REASONS,

The Panel, unanimously, holds that the complaint must be rejected in accordance with Rule 29 (c), (d) and (e) and therefore

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member