



## **INADMISSIBILITY DECISION**

**Date of adoption:** 14 September 2011

**Case No.** 2011-04

**Besim BERISHA**

**Against**

**EULEX**

The Human Rights Review Panel sitting on 14 September 2011 with the following members present:

Mr. Antonio BALSAMO, Presiding Member  
Ms. Magda MIERZEWSKA, Member  
Ms. Anna BEDNAREK, Member

Assisted by  
Mr. John J. RYAN, Senior Legal Officer  
Ms. Leena LEIKAS, Legal Officer  
Ms. Stephanie SELG, 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 of 9 June 2010,

Having deliberated, decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was registered on 22 February 2011.
2. On 8 June 2011 the Panel decided to give notice of the complaint to the Head of Mission (HOM) of EULEX Kosovo, inviting him to submit written observations on the complaint. It was also decided to examine the merits of the application at the same time as its admissibility, Rule 30 paragraphs 1 and 2 of the Rules of Procedure of the Panel (hereafter ROP), refers.

3. The observations of the HOM on the admissibility of the complaint were received on 24 August 2011. They were subsequently translated and communicated to the complainant for his additional observations. The complainant was notified that were he not to reply the letter, the Panel might consider that he did not intend to pursue his complaint.
4. The complainant failed to contact the Panel within the set time limit.

## **II. THE FACTS**

5. The following facts appear from the information provided by the parties.
6. The complainant was a prisoner in Dubrava Prison. He alleged that he was residing in Prison Pavilion no. 3 for a period in excess of 14 months. He claimed that the maximum time to be spent in Pavilion 3 was six months in accordance with the applicable prison rules and regulations.
7. In addition to the excessive length of time he was serving in the Pavilion 3, he complained about the extremely difficult conditions in the said pavilion, which did not, in his opinion, meet even the minimum standards of living.
8. He alleged that the pavilion did not have heating during the cold winter months, as there was no fuel available. The cells were humid with mould, there was no warm water and the showers were continuously out of order.
9. He also claimed that the food served to the prisoners was below any acceptable quality and it was served from shared plates, which increased the risk of illness due to poor hygiene conditions and the fact that prisoners, who were ill, shared meals with the healthy ones.
10. According to the information received from the HOM, the complainant was released from Dubrava Prison by order of the Supreme Court dated 26 April 2011.

## **III. COMPLAINTS**

11. From the facts of the case it may be assumed that the complainant alleges violations of Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR, 1950) in so far as it prohibits inhuman or degrading treatment.
12. He also complains about alleged corruption and mismanagement amongst the prison staff. He claims that the prisoners in pavilions Nos. 3 or 5 have to pay at least 500 to 1,000 Euros (EUR) to be moved to better conditions in other pavilions, despite meeting the

criteria for such relocation. Similar pecuniary arrangements allegedly exist with regard to weekend leave and eventual conditional release.

13. The complainant requests that the Panel makes recommendations for the establishment of a committee to inspect the general situation and living conditions of the prisoners in the Dubrava Prison.

#### **IV. THE LAW**

14. 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.
15. The Panel can only examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors as outlined in Rule 25, paragraph 1 of its ROP.
16. In his observations the HOM stated merely that the current complaint refers to areas falling outside the EULEX executive mandate. No further observations or arguments for this statement were provided. In particular, no arguments were submitted explaining the scope of EULEX involvement, if any, into the management of the Kosovo prison system.
17. The Panel, therefore, considers it appropriate to leave open the examination of whether EULEX executive mandate touches upon issues concerned in the present case.
18. Furthermore, the Panel considers that the proper examination of the complaint, in the light of Article 6 of the Convention, would require not just more comprehensive observations from the HOM but also counter argumentation from the complainant.
19. As the complainant has not replied to the Panel's communications, it seems that the complainant has lost interest in his complaint. Therefore, and in the absence of an indication of a serious human rights violation, it is not justified to continue the examination of the complaint.
20. Saying that, the Panel notes that there is nothing to prevent the complainant from reintroducing his complaint before the Panel within six (6) months from the expiry of the alleged continuous violation of his human rights and fundamental freedoms.

**FOR THESE REASONS,** The Panel, unanimously,

*decides* to strike the application out of its list of cases (Rule 46 of the ROP).

For the Panel,

John J. RYAN  
Senior Legal Officer

Antonio BALSAMO  
Presiding Member