



INADMISSIBILITY DECISION

Date of adoption: 06 July 2023

Case No. 2021-01

N.M.

Against

EULEX

The Human Rights Review Panel (“the Panel”), sitting on 06 July 2023 with the following members present:

Ms Snježana BOKULIĆ, Presiding Member
Mr Petko PETKOV, Substitute Member
Ms Marina MANCINI, Member

Assisted by
Mr Ron HOOGHIEMSTRA, 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 11 December 2019,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was initially brought to the attention of the Panel by the complainant’s daughter in 2020.
2. On 24 December 2020, the Secretariat requested the complainant to provide a Letter of Authority authorizing his daughter to represent him in the proceedings, as the complainant was in detention at that time.
3. The complaint was registered on 4 February 2021. In the proceedings before the Panel, the complainant is represented by his daughter.
4. On 16 August 2022, the Secretariat requested the complainant to confirm that he had been released from detention. If that was indeed the case, the Secretariat inquired whether the complainant wished to maintain his complaint. In that case, he was requested to complete a new complaint form and to include a signed Letter of Authority.

5. On 21 September 2022, the complainant submitted a new complaint form including a signed Letter of Authority authorizing his daughter to represent him in the proceedings. The complainant requested that his identity be kept confidential.

II. THE FACTS

6. The complainant worked as a violent crimes inspector in the police in Ferizaj/Uroševac, Kosovo, beginning in 1987 and including during the war in 1998-99. After the war, the complainant moved to Novi Pazar, Republic of Serbia, where he continued to work as a violent crimes inspector.
7. In July 2010, when the complainant travelled to Ferizaj/Uroševac, Kosovo, he was arrested outside the Ferizaj/Uroševac Police Administration and taken in for questioning by the European Union Rule of Law Mission in Kosovo, EULEX Kosovo (hereafter "the Mission") about events in Kosovo in 1999. The complainant states the Mission questioned him for several hours and then released him due to lack of evidence, assuring him that he had performed his duties in full compliance with the law.
8. On an unspecified date after July 2010, the complainant purchased an apartment in Kosovo and took up residence there.
9. On 14 June 2019, the complainant was arrested at the Brnjak border crossing by Kosovo Police and informed that there was an indictment against him for alleged war crimes committed by him in Kosovo in 1999. The complainant is accused of ordering the burial of four victims in a manner violating international humanitarian law.
10. The complainant states that since 14 June 2019, he has been detained, initially in Pristina and Prizren, and since 18 June 2019 in Gërdovc, a high-security prison in Podujevë/Podujevo.
11. The complainant states that while detained in Prizren, he was attacked by other detainees on the basis of rumours of his having allegedly committed war crimes against the Albanian population. In Gërdovc, the complainant states that he spends 22 hours a day in a solitary cell.
12. As a result, he says that he suffered from various health issues. He states that in detention he was given a medication that in light of a pre-existing health condition, he should never have taken.
13. The complainant and his family submitted several complaints to national and international instances and organizations seeking assistance with respect to threats to the complainant's life and health during his time in detention. The complainant submitted evidence of such complaints to the Specialist Prosecutor's Office in The Hague, and to the United Nations International Residual Mechanism for Criminal Tribunals. The complainant further refers to having made such complaints to the EULEX Mission, the Organization for Security and Cooperation in Europe (OSCE), the Kosovo Ombudsman, the Ministry of the Interior of Serbia, and the American Embassy in Kosovo.
14. On 23 June 2022, the Supreme Court of the Republic of Kosovo (Judgment no. Pml.no.46/2022) acquitted the complainant of all charges against him and ordered that

the sentence of imprisonment against the complainant be terminated with immediate effect.

15. That same day, the Basic Court of Pristina ordered the complainant's immediate release from detention by the Gërdovc High-Security Prison.

III. COMPLAINTS

16. The complainant alleges that, as a result of his arrest and detention, several of his human rights have been violated, including the right to a fair trial, as protected under Article 6 of the European Convention on Human Rights.
17. The complainant also alleges that his life and health were put at risk due to the conditions of his detention and the improper medication he received while in prison. The complainant alleges violations of Articles 2, 3 and 5, paras 1 and 4, of the European Convention on Human Rights.
18. The complainant also cites relevant articles of the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

IV. THE LAW

19. Before considering the complaint on its merits, the Panel has to decide whether to admit the complaint, taking into account Rule 29(1) of its Rules of Procedure. This provision states that the Panel may declare a complaint inadmissible in summary proceedings, *inter alia*, if the complaint falls outside of the Panel's jurisdiction.
20. According to Rule 25(1) of the Rules of Procedure, the Panel's jurisdiction is limited to examining complaints of alleged human rights violations by the Mission in the conduct of its executive mandate. The Mission's executive mandate was until June 2018 confined to certain matters in the police, justice, and customs sectors, and this executive mandate was further limited in June 2018 (see Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, and Council Decision (CFSP) 2018/856 of 8 June 2018 amending Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO).
21. It has not been shown or even argued that the Mission has been involved in either the criminal proceedings against the complainant or in his detention. These proceedings are conducted by the Kosovo authorities under their jurisdiction, outside of the residual executive mandate of the Mission. Detention is likewise carried out under the authority of local authorities, rather than the Mission. The Panel cannot in principle review judicial proceedings before the courts in Kosovo, as set out in Rule 25(1) of its Rules of Procedure. Furthermore, it has no jurisdiction in respect of either administrative or judicial aspects of the work of the Kosovo courts or the prison system. Consequently, the Panel cannot influence the conduct or outcome of the judicial proceedings (see e.g. *Z.A. Against EULEX*, 2014-36, 29 February 2016, para 17). Nor can the Mission directly control the treatment of persons in detention.
22. While the Panel acknowledges that the issues presented by the complainant raise concerns, they do not fall within the ambit of the executive mandate of EULEX Kosovo

and appear to be within the exclusive responsibility of the local, Kosovo, authorities. Consequently, they fall outside of the Panel's competence, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo (see e.g. *Shaip Gashi v. EULEX*, 2013-20, 26 November 2013, para.9; *Jovanka, Dragan and Milan Vuković against EULEX*, no. 2013-18, 7 April 2014, paras.11-12).

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, as it falls outside the scope of its jurisdiction, within the meaning of Rules 25(1) and 29(1)(d) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE;

For the Panel,

Snježana BOKULIĆ,
Presiding Member

Petko PETKOV,
Substitute Member

Marina MANCINI,
Member