



INADMISSIBILITY DECISION

Date of adoption: 27 March 2019

Case No. 2018-04

Afrim Islami

Against

EULEX

The Human Rights Review Panel sitting on 27 March 2019 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Ms Anna BEDNAREK, Member

Assisted by:
Mr Ronald 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 15 January 2019,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 24 September 2018.
2. On 28 June 2016 and 17 October 2017, the Panel rendered two Inadmissibility Decisions in relation to prior complaints submitted by the same complainant and pertaining generally to the same events.
3. On 21 December 2018, the Panel requested the Head of Mission (HoM) to provide a comprehensive statement of the competence of EULEX to monitor prosecution and court cases under its current mandate.

4. On 24 January 2019, the HoM submitted her response.
5. On 21 February 2019, the HoM's response was communicated to the complainant for information.
6. Following the recent resignation of one of its permanent members, the Panel will sit in this matter with only two members in accordance with Rules 11 and 14 of the Panel's Rules of Procedure.

II. THE FACTS

7. The facts of the case as submitted by the complainant may be summarised as follows.
8. On 19 July 2018, the complainant submitted a letter to EULEX Headquarters requesting that EULEX monitor the criminal case against him that is currently pending before the Basic Court in Pristina.
9. The complainant alleges that the charges against him are motivated by political interests and influenced by organized criminal elements.
10. The complainant did not receive any response from EULEX to this request and EULEX has not monitored his case.

III. COMPLAINTS

11. Without invoking any particular provisions of the international instruments for the protection of human rights, the complainant alleges that the criminal case against him is a result of political and criminal influences. It is apparent from the tenor of the complaint that he alleges that without monitoring by EULEX he will not receive a fair trial as guaranteed by Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

IV. THE LAW

12. 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.
13. Before considering the complaint on its merit, the Panel must decide whether to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
14. According to Rule 25, paragraph 1, of the Rules of Procedure, until 14 June 2018, the Panel could examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate. Thereafter, the Mission's

mandate changed and it only performs a monitoring function in relation to judicial proceedings.

15. The Panel notes that under its current mandate, as based on Council Decision CFSP 2018/856 of 8 June 2018, and outlined by the HoM in her letter of 24 January 2019 –

“EULEX Kosovo monitors selected cases and trials in Kosovo’s criminal and civil justice institutions, in close coordination with other EU actors. This includes but is not limited to cases that were handed over to the competent Kosovo institutions. The Mission’s relevant staff is co-located with selected Kosovo institutions. Selected cases are monitored from the investigative phase to the execution of sentence. In implementing its monitoring mandate EULEX Kosovo fully respects the principle of independence of the judiciary.”

[...]

“EULEX Kosovo conducts systemic, thematic and ad hoc monitoring. It provides its assessments and findings to Kosovo institutions and keeps other relevant EU actors informed in order to strengthen Kosovo’s advancement on its European path.”

16. In the present case, the Panel observes that it has not been argued, let alone shown, that EULEX was, or would be, in any way involved in the alleged violations of the complainant’s rights.
17. The Panel notes, furthermore, that the complainant has sought the assistance of the Monitoring Pillar of EULEX to monitor the criminal proceedings against him. However, based upon its current mandate, it has not been shown that EULEX Kosovo would be obligated to monitor this particular case. Nor has it been shown that the Mission’s failure to monitor this case was arbitrary or contributed to the violation of the complainant’s rights.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, as it is manifestly ill-founded within the meaning of Article 29 (1) (e) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


Guénaél METTRAUX
Presiding Member




Anna BEDNAREK
Member