



INADMISSIBILITY DECISION

Date of adoption: 8 April 2013

Case No. 2012-15

Shefqet Emërlahu

Against

EULEX

The Human Rights Review Panel sitting on 8 April 2013 with the following members present:

Ms. Magda MIERZEWSKA, Presiding Member
Mr. Guénaël METTRAUX, Member
Ms. Katja DOMINIK, Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Joanna MARSZALIK, Legal Officer
Mr. Florian RAZESBERGER, 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 on 18 October 2012.

II. THE FACTS

2. On 4 July 2008, the Gjilan/Gnijlane District Prosecutor charged a certain R.E. with aggravated murder committed for the purpose of obtaining pecuniary benefit, two counts of attempted aggravated murder and illegal possession of firearms. From the complainant's submissions it would appear that R.E. is a relative of his, but he does not provide any details on their relationship.
3. On 2 June 2009, the District Court of Gjilan/Gnijlane convicted R.E. as charged and sentenced him to nineteen years' of imprisonment.
4. Upon an appeal brought by the defendant's counsel, on 7 July 2010, the Supreme Court of Kosovo changed the legal qualification of the offence to an aggravated murder in revenge. The court upheld the remainder of the first instance judgment.
5. On 26 November 2010, the Supreme Court rejected the defendant's request for protection of legality as ungrounded.

III. COMPLAINTS

6. The complainant alleges that the EULEX prosecutors failed to act and to investigate the case properly. He also complains in essence that the proceedings before the Kosovo courts were unfair.

IV. THE LAW

7. 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.
8. 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.
9. The Panel notes that the final decision in the case at issue was given on 26 November 2010. The complaint was lodged on 18 October 2012, therefore is outside the six-month time limit provided for in Rule 25 paragraph 3 of the Rules of Procedure. The complaint does not therefore satisfy the admissibility criteria set out in Rule 29 of the Rules of Procedure.
10. The Panel notes further that, according to Rule 25, paragraph 1 of the Rules of Procedure, the Panel can examine complaints by persons claiming to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.

11. As to the meaning of the word “victim”, the European Court of Human Rights (ECHR) has found on many occasions that a "victim" within the meaning of the Convention denotes the person directly affected by the act or omission in issue (see, among many authorities, *Amuur v. France*, 25 June 1996, par. 36, Reports of Judgments and Decisions 1996-III). On several occasions, when there was a personal and specific link between the direct victim and the applicant, the Court accepted an application from a person, who was considered an indirect victim. Whether a person is such a victim will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include, among others, the existence and proximity of the family tie, the particular circumstances of the relationship, the extent to which the person witnessed the events in question (see, *mutatis mutandis*, *Kurt v. Turkey*, judgment of 25 May 1998, Reports 1998-III, pars 130-134; *Yaşa v. Turkey*, judgment of 2 September 1998, Reports on Judgments and Decisions 1998-VI, par. 71; and conversely, *Çakıcı v. Turkey* [GC], no. 23657/94, pars 98-99, ECHR 1999-IV). The Panel adopted the approach developed by the ECHR as its own in such matters. The Rules of Procedure do not, therefore, envisage the bringing of an *actio popularis*; they do not permit individuals to complain against alleged actions and omissions on the part of EULEX *in abstracto* simply because they feel that they infringe human rights (see the HRRP case no. 2012-07, *Ibishi against EULEX*, par. 7).
12. The Panel notes that the complainant does not provide any details which would allow it to establish that his relationship with R.E. is close enough to consider him an indirect victim of the alleged violations. There is also no indication that the complainant’s rights have been directly affected in any way.
13. The Panel concludes, therefore, that the complainant cannot claim to be a victim of a human rights violation by EULEX Kosovo within the meaning of Rule 25, paragraph 1 of the Rules of Procedure.

FOR THESE REASONS,

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

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member