INADMISSIBILITY DECISION

Date of adoption: 01 March 2016

Case no. 2015-10

Shaban Syla

against

EULEX

The Human Rights Review Panel sitting on 29 February 2016
with the following members present:

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

Assisted by
Mr Paul Landers, Legal Officer
Ms Joanna MARSZALIK, 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 28 July 2015.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, may be summarized as follows:

3. On 28 December 2009, the Office of the Special Prosecutor of the Republic of Kosovo issued a Ruling on extension of an investigation which had been

initiated on 30 November 2009. The Ruling on extension was for the purpose of including the complainant in the investigation as a suspect.

4. On 21 June 2011, the Office of the Special Prosecutor filed an application to the Basic Court for the arrest of the complainant and an arrest warrant was issued.

5. On 6 July 2011, the Office of the Special Prosecutor filed a request to the District Court of Pristina for the detention on remand of the complainant. This application was rejected by the District Court. However, other measures were imposed such as reporting to the Police Station and a prohibition on approaching other defendants or injured parties.

6. On 28 July 2011, a Panel of three Judges modified the Ruling of the District Court dated 6 July 2011 and, as a result, the complainant was placed under house detention.

7. On 17 December 2012, the complainant was convicted of Attempted Aggravated Murder by the Basic Court of Pristina. He was sentenced to a term of imprisonment of eight years. According to the documents provided, the complainant had been under house detention from 28 July 2011 until his conviction. Following his conviction, the complainant was again detained under house arrest. The complainant lodged an appeal against the ruling of the Trial Court (on 25 March 2013). In a Ruling dated 24 May 2013, the Basic Court of Pristina ordered the continued house arrest of the complainant.

8. The complainants appeal was heard by the Court of Appeals on 12 December 2013. In its judgment of 21 February 2014, the Court of Appeals found... *"that there has been a violation of the criminal law in the sense that the time spent by the defendants in detention was not credited to the punishments".* The Court of Appeals modified the judgment of the District Court of Pristina of 17 December 2012 and determined that the sentences imposed upon the complainant should have included the time spent in detention until the first instance imprisonment sentences and the determination of appeals.

III. COMPLAINTS

9. The complainant submitted that he has been under house arrest from 6 May 2011 until 23 March 2015 and that his fundamental rights guaranteed by the Constitution of the Republic of Kosovo have been violated. His complaint appears to pertain to the question of the deduction from his sentence of the period of time which he spent under house arrest. The complainant does not fully articulate the circumstances under which this is said to have occurred. From the complainant's submissions, it can be asserted that the complainant alleges violations of Artciles 5 and 6 of the European Convention on Human Rights and Fundamental Freedoms (The Convention):

IV. THE LAW

10. 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.

11. Before considering the complaint on its merits, 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.

12. According to Rule 25, paragraph 1, of the Rules of Procedure the Panel can examine complaints relating to alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.

13. While the precise nature of the complaint is somewhat ambiguous, the Panel understands the complaint to be directed against decision/decisions of the Kosovo courts in respect of his detention.

14. The Panel has held on numerous occasions that, according to Rule 25, paragraph 1, of its Rules of Procedure, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo. The fact that EULEX judges sit on the bench does not detract from the courts the character as part of the Kosovo judiciary (see, inter alia, Halili against EULEX, no. 2012-08, 15 January 2013, par. 21; Pajaziti against EULEX, no. 2012-05, 4 October 2012 pars. 9-10; Dobruna against EULEX, no. 2012-03, 4 October 2012, par. 12).

15. It follows from that fact alone that the complaint falls outside the ambit of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo. The Panel is not satisfied that the complainant has demonstrated that the conduct complained of could be otherwise attributed to the Mission.

16. Furthermore, the Panel notes that the conduct complained of would seem to fall outside of the 6-month timeframe within which a complaint must be filed with the Panel (Rule 25(3) of the Panel's Rules of Procedure). The decision of the District Court Trial Panel convicting the complainant and its failure to credit him with the time he spent in detention prior to conviction and sentencing was rendered on 17 December 2012 while the present complaint was brought before the Panel on 28 July 2015.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, as it as it falls outside its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure and fails to comply with Article 25(3) of the Rules regarding time-limit for filing of a complaint, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

Joanna Marszalik
Legal Officer

Human Rights Review Panel
Kosovo

Magda MIERZEWSKA
Presiding Member