



INADMISSIBILITY DECISION

Date of adoption: 28 June 2016

Case No. 2016-03

Afrim Islami

Against

EULEX

The Human Rights Review Panel sitting on 28 June 2016 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Elka FILCHEVA - ERMENKOVA, Substitute Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
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 8 February 2016. Due to the resignation of Ms Katja Dominik as a Panel Member, she was

replaced in the composition of the Panel by Ms Elka Filcheva–Ermenkova, the Substitute Member of the Panel, in accordance with Rule 14 par. 2 of the Rules of Procedure.

II. THE FACTS

2. The facts of the case as submitted by the complainant may be summarised as follows.
3. On 27 August 2015, when the complainant went to open his office “Abis Driving School” at St. Agim Ramadani, no.22/44, he was confronted by security officers from the Public Housing Enterprise and prevented from entering his office.
4. The complainant immediately went to the Offices of the Public Housing Enterprise in order to ascertain why he had been prevented from entering his office. The Director of the Public Housing Enterprise, N.K., informed him that he had to pay a debt of 37.000 Euro and a three-year rent advance. The complainant paid the outstanding debt. Following this, the complainant phoned and then went to the Central Police Station in Pristina. He was allegedly told that he could be forced out of his office.
5. When the complainant returned to his office, fifteen security officers of a private company sent by the Public Housing Enterprise immediately entered the office after him. Upon the intervention of a police officer the security agents retreated. The complainant was again in contact with the local police about the matter. Two hours later, two police officers came to the complainant’s office and detained the complainant and his son in the police station until the next morning. The complainant and his son were then sent to a Kosovo prosecutor, S.I., who apologized for detaining them and allegedly stated that the Police had misunderstood his instructions.
6. On the evening of that day, the complainant’s lawyer requested from the Police to receive the reason for holding him in detention. He did not receive any written explanation but was told that his detention had been ordered by the Prosecutor. The next day he requested the Prosecutor to provide a formal explanation for his detention.
7. On the morning of 2 September 2015, the complainant went to work. Once again he found intruders who had broken in. They left when the police arrived. He subsequently had contacts with both Kosovo police and Kosovo prosecutors about this matter.
8. The complainant states that three or so weeks later the complainant had contacts with the Director of the Public Housing Enterprise with whom he discussed the resolution of matter. This,

in turn, led to further contacts with both the Kosovo police and Kosovo prosecutors.

9. Legal proceedings were subsequently initiated by the Public Housing Enterprise against the complainant through the following indictments: Indictment C.no.771/08 for paying the debt, and Indictment C.no. 576/14 for vacating the office and paying the debt. The Public Housing Enterprise subsequently withdrew those two indictments: Ruling of the Basic Court of Pristina, C.no.771/08 of 24.11.2015 and Ruling C.no.576/14 of 30.11.2015 refer.
10. The complainant reported the case to the Police Inspectorate of Kosovo IPK/DSHMA/770/215 on 30 September 2015. F.F. from the Directorate of Professionals Standards called the complainant and interrogated him but he was not given any case number. The complainant has received no follow up information from the Directorate of Professional Standards.

III. COMPLAINTS

11. Without invoking any particular provisions of the international instruments for the protection of human rights, it can be asserted from the content of the complaint that complainant alleges that he was unjustly detained by the police (Article 5 ECHR), his right to privacy was violated (Article 8 ECHR), he was denied his right to an effective remedy (Article 13 ECHR) and his right to the peaceful enjoyment of his possessions was interfered with (Article 1, First Protocol ECHR).

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 the Panel can examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.

15. In the present case, the Panel observes that it has not been argued, let alone shown, that EULEX was in any way involved in the alleged violations of the complainant's rights. The complainant does not appear to have sought the assistance or involvement of any relevant branch of EULEX, nor does it suggest a culpable failure to act on its part.
16. While the Panel acknowledges that the issues raised by the complainant (in particular the complainant's detention; the failure of the authorities to act decisively and effectively to stop further harassment of the complainant; the failure to investigate the taking of a large amount of money from him) are of a serious nature and raise concerns, they do not fall within the ambit of the executive mandate of EULEX Kosovo. 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 *Shaip Gashi v. EULEX*, 2013-20, 26 November 2013 § 9; *Jovanka, Dragan and Milan Vuković against EULEX*, no. 2013-18, 7 April 2014, §§ 11-12).

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, as it falls outside its jurisdiction 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