



## **INADMISSIBILITY DECISION**

**Date of adoption: 17 October 2017**

**Case No. 2016-27**

**Afrim Islami**

**Against**

**EULEX**

The Human Rights Review Panel sitting on 17 October 2017 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member  
Mr Guénaél METTRAUX, Member  
Ms Eika ERMENKOVA, Member

Assisted by  
Mr John J. RYAN, Senior 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, the Human Rights Review Panel ("the Panel") decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was registered with the Panel on 22 September 2016.

### **II. THE FACTS**

2. The facts of the case as submitted by the complainant may be summarized as follows:
3. The complainant submitted his complaint to the Panel on 22 September 2016 in relation to a criminal case pending before the Basic Prosecution Office, Ferizaj/Uroševac.

4. The complaint concerns a property dispute between the complainant and the Public Housing Enterprise (PHE). This resulted in the detention of the complainant and his son by the Kosovo police in the Central Police Station, Pristina. According to the complaint, the matter also resulted in the alleged failure on the part of the police to protect the complainant from harassment and from having to pay Euros 37,000 to PHE an amount which he claims was not lawfully due.
5. The complainant has filed an earlier complaint with the Panel in regard to the same matter on 8 February 2016 (Case No 2016-03, Afrim Islami against EULEX). On 28 June 2016, the Panel found this complaint to be inadmissible.
6. In relation to his most recent request dated 29 August 2016, the complainant requested the Chief EULEX Prosecutor (CEP) to take over this case on a "grounded suspicion that there are efforts of exerting influence on the criminal offense". The request was based on Article 12 of the Law No. 03/L-53, the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors of 13 March 2008 ("Law on Jurisdiction") (see relevant applicable law).
7. The CEP replied to the complainant on 7 September 2016 to state that from 30 May 2014 the mandate of EULEX had undergone "major changes" in that EULEX prosecutors could not take new cases in accordance with the Article 7(A) of the Law on Jurisdiction, as well as Law No. 05/L-103 of 2016 of 15 June 2016 On Amending and Supplementing Laws related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo (see relevant applicable law).
8. The CEP went on to explain to the complainant that a case could only be assigned to a EULEX prosecutor by the Kosovo Prosecutorial Council, which in turn had to be based on a reasoned request from the Chief State Prosecutor and upon receipt of the agreement of the EULEX competent authority. This could only occur where the extraordinary circumstances outlined in Article 7(A) were complied with. The CEP then outlined the extraordinary circumstances which it said would have to prevail before Article 7(A) might be invoked: the unwillingness or inability on the part of the Kosovo prosecutor to act in the case; that the expertise and experience of the EULEX prosecutor was necessary to ensure the proper investigation or the criminal prosecution of the case and that there was a grounded suspicion of attempts being made to influence the criminal investigation or the criminal prosecution.
9. The CEP further stated that the claim advanced by the complainant did not reach the high threshold that would justify the involvement of EULEX prosecutors at this stage of the criminal investigations.
10. With regard to alleged misconduct of Kosovo prosecutors, the CEP stated that the Kosovo Prosecutorial Council (KPC) was the responsible body for the investigation of allegations of misconduct by Kosovo prosecutors. The CEP advised the complainant that the Office of Disciplinary Counsel was an independent body that served the KPC and that it was responsible for the investigation of alleged misconduct of Kosovo prosecutors. The CEP suggested that the complainant submit his representations to the KPC if he had reason to believe that there had been such misconduct on the part of the Kosovo prosecutors.

11. The CEP finally advised the complainant that as the events to which he referred would have to be investigated and prosecuted by the Kosovo prosecutors, he would transmit the letter of the complainant to the Office of the Chief State Prosecutor for its consideration.
12. The complainant submitted another letter to the CEP on 4 April, 2017 with a further request that EULEX should take over this case, again on the basis of the provisions of the Law on Jurisdiction, stating that: “new and extraordinary circumstances have emerged such as political influence by senior officials in my case and such influence included also prosecutors who have dealt with my case”.
13. The CEP sent his reply to the complainant on 12 April 2017 in which he essentially reiterated what had been communicated to the complainant in the letter of 7 September 2016. The CEP also advised the complainant that his office would not entertain any further correspondence from the complainant on the matter.

### **III. RELEVANT APPLICABLE LAW**

14. Two provisions of Kosovo law are relevant to the present matter. Article 12 of the Law on Jurisdiction provides that EULEX prosecutors can act in case of unwillingness or inability of Kosovo Public Prosecutors to do so in any particular matter otherwise within the competence of the Mission.
15. Article 7(A) of the Law on Jurisdiction states as follows:

“In extraordinary circumstances upon reasoned request of the Chief State Prosecutor, the Prosecutorial Council may decide that a case is assigned to EULEX Prosecutor, upon agreement by the EULEX Competent Authority”.

### **IV. COMPLAINTS**

16. Without invoking any particular provisions of the international instruments for the protection of human rights, it can be assumed that the complainant alleges violations of the following articles: that he was unjustly detained by the Kosovo police (Article 5 ECHR); that he was denied his right to a fair hearing (Article 6 ECHR); that he was denied his right to an effective remedy (Article 13 ECHR); and that his right to the peaceful enjoyment of his possessions was interfered with (Article 1, Protocol 1 ECHR).

### **V. THE LAW**

17. 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 the human rights to be guaranteed by public authorities in all democratic legal systems.

18. 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.
19. 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.
20. 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. Nor does the complaint indicate a culpable failure on the part of EULEX to act in this matter.
21. Furthermore, the circumstances outlined by the complainant in this case does not suggest that EULEX Prosecutors acted unreasonably or arbitrarily in declining to exercise their "extraordinary" competence pursuant to Article 7(A) of the Law on Jurisdiction (see, generally, *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., and I.R. against EULEX*, 2014-11 to 2014-17, 19 October 2016, para. 58 and its references to paras. 9, 10 and 49 in the same decision, and to *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, 30 September 2015, para. 75; *L.O. against EULEX*, 2014-32, 11 November 2015, paras. 46-47; *Sadiku-Syla against EULEX*, 2014-34, 19 October 2016, para. 32; *D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., and I.R. against EULEX*, 2014-11 to 2014-17, 19 October 2016, para. 64; *Rejhane Sadiku-Syla against EULEX*, 2014-34, 29 September 2015, para. 62; *Mufail Halili against EULEX*, 2012-08, 15 January 2013, para. 28).
22. Therefore, these matters fall outside of the competence of the Panel, as formulated in Rule 25 of its Rules of Procedure (*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 its jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure, and therefore

#### **DECLARES THE COMPLAINT TO BE INADMISSIBLE.**

For the Panel,

  
John J. RYAN  
Senior Legal Officer



  
Magda MIERZEWSKA  
Presiding Member