



INADMISSIBILITY DECISION

Date of adoption: 7 July 2022

Case no. 2019-02

Driton Hajdari and Teuta Bici-Hajdari

Against

EULEX

The Human Rights Review Panel, sitting on 7 July 2022 with the following members present:

Ms Snježana BOKULIĆ, Acting Presiding Member
Mr Alexander FASSIHI, 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 11 December 2019,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint in this case was registered on 18 October 2019.
2. By letter of 21 October 2019, the Panel informed the Head of Mission (“HoM”) of the European Union Rule of Law Mission in Kosovo, EULEX Kosovo (“the Mission”) that this case had been registered.
3. On 12 November 2019, the Panel requested the complainants to provide additional information regarding the first complainant’s release from detention. In the light of this release, the Panel also asked the complainants to confirm whether they wished to maintain their complaint. On 19 November, the complainants confirmed that the first complainant had been released from detention and confirmed their intention to continue to pursue the complaint.

4. On 22 January 2020, the Panel transmitted a Statement of Claims and Questions to the Head of Mission (“HoM”) of the European Union Rule of Law Mission in Kosovo, EULEX Kosovo (“the Mission”) inviting the Mission to submit answers to the questions by 23 March 2020.
5. On 30 July 2021, the HoM submitted his responses and observations on the case.
6. On 09 August 2021, the HoM's letter was submitted for information to the complainants, who were given until 10 September 2021 to make any further submissions in response to that letter.
7. On 10 September 2021 the complainants submitted a response.

II. COMPOSITION OF THE PANEL

8. Following the resignation of one of its External Members, the Panel will sit in this matter with only two members, in accordance with Rule 14 (4) of the Panel's Rules of Procedure.

III. FACTS

9. The complainants are Mr. Driton Hajdari and his wife, Ms. Teuta Bici-Hajdari, residing in Pristina. Ms. Bici-Hajdari brought the complaint, as the authorized representative, on behalf of her husband, Mr. Driton Hajdari, as well as on her own behalf.
10. On 17 December 2012, Mr. Driton Hajdari was convicted by the District Court of Pristina (P. No. 592/2011) of attempted aggravated murder in co-perpetration and sentenced to seven years of imprisonment. Two EULEX judges, of which one Presiding, and one local judge served on the panel in the criminal trial.
11. On 12 December 2013, Mr. Hajdari's conviction was confirmed by the Court of Appeals (PAKR No. 102/2013) and his sentence was modified to take into account the period of time he had spent in detention on remand. Two EULEX judges, of which one Presiding, and one local judge served on the panel of the Court of Appeals.
12. On 3 September 2014, the Supreme Court rejected as ungrounded Mr. Hajdari's Request for Protection of Legality (Pml.Kzz. 98/2014). The Supreme Court panel was composed of two EULEX judges, of which one Presiding, and one local judge. Mr. Hajdari's conviction and sentence thereby became final.
13. At some point in 2015, while Mr. Hajdari was in detention at Dubrava Correctional Center, he was diagnosed with amyotrophic lateral sclerosis (ALS). Since that time, he was regularly hospitalized for treatment at the University Clinical Centre of Kosovo (UCCK) in Pristina.
14. Following the request by Mr. Hajdari on 6 June 2017 to the Basic Court of Pristina for a temporary suspension of the execution of his prison sentence on medical grounds, the President of the Basic Court in Pristina, requested the team of medical experts of the Hospital and University Clinical Service of Kosovo (HUCSK) to provide medical expertise. On 28 July 2017, the expert report confirmed that Mr. Hajdari was suffering from ALS, which is a chronic progressive disease for which no cure exists. Treatment consists of alleviating the symptoms. The expertise concluded, inter alia, that, *“Prison facilities do not have adequate conditions for the treatment of these cases at the stages where the disease has advanced so far, and at the terminal stages of the disease.”*

15. On 3 August 2017, the President of the Basic Court of Pristina (Ruling ED.nr.1160/2014) rejected the request for a temporary suspension of execution of the sentence.
16. On 18 December 2017, the complainants submitted a request to the Basic Court of Pristina for the early release of Mr. Hajdari; the request was rejected on 20 December 2017 (Judgment Kp.nr.1445/2017).
17. On 4 January 2018, the Prison Healthcare Department of the Ministry of Health sent a letter to Mr. Hajdari's lawyer. This letter stated, inter alia, that the Prison Healthcare Department does not have the material, professional or pharmaceutical conditions to be able to provide treatment for Mr. Hajdari.
18. On 21 February 2018, the Ombudsperson of the Republic of Kosovo submitted a legal opinion in the capacity of amicus curiae to the Basic Court of Pristina regarding Mr. Hajdari's case. The Ombudsperson concluded that,

“Lack of adequate medical care as well as any other essential care combined with physical suffering amounts to the degrading treatment provided for in Article 3 of the European Convention for the Protection of Human Rights and breaches all international standards for the protection of human rights of persons deprived of their liberty. Therefore, further detention of [Driton Hajdari] in the conditions and care as specified in the report submitted by the Prison Health Department, would constitute violation of Article 3 of the European Convention for the Protection of Human Rights and other international aforementioned Human Rights instruments.”

19. Subsequently, the complainants submitted a new request to the President of the Basic Court of Pristina for a temporary suspension of the execution of Mr. Hajdari's sentence.
20. On 14 March 2018, The President of the Basic Court of Pristina approved the request and suspended the execution of Mr. Hajdari's sentence for a period of five (5) months, namely from 14 March 2018 to 14 August 2018.
21. Subsequent to this ruling, Mr. Hajdari was returned to his family home for care and treatment.
22. Between 15 August 2018 and 15 April 2019, the President of the Basic Court of Pristina approved an extension of the suspension of execution of Mr. Hajdari's sentence on three occasions, the latest extension being until 15 July 2019.
23. On 10 July 2019, the President of the Basic Court of Pristina (Ruling ED.nr.155/2018) refused an additional extension of the execution of Mr. Hajdari's sentence. In the ruling the President reasoned, inter alia, that, according to the Article 94 par. 6 of the Law for Amending and Supplementing Law no. 04/L-94 on the Execution of Penal Sanctions, *“the suspension of the execution of the sentence shall not extend beyond the minimum period required to complete the medical treatment.”*
24. On or about 20 July 2019, subsequent to the ruling of 10 July 2019, Mr. Hajdari was detained at his family home and returned to the Dubrava Correctional Centre. Apparently, shortly thereafter, Mr. Hajdari was transferred to the UCCK for treatment.
25. On 26 July 2019, the Hospital and University Clinical Service of Kosovo (HUCSK) issued a medical report regarding the status of Mr. Hajdari. The HUCSK report (ref.no.330/19) concluded, inter alia, that,

“The prison environment has no conditions for further treatment of the patient, Driton Hajdari, at this stage of aggravation of the disease and the general condition of the patient. Family care is preferred and in case of respiratory

deterioration and general condition again hospitalization is preferred, where the patient will be offered oxygen respiratory assistance as well as nasogastric probe feeding assistance.”

26. On 2 August 2019, the complainants submitted a request to the Kosovo Judicial Council (KJC) for conditional release of Mr. Hajdari for the remaining duration of his sentence which the Conditional Release Panel of the KJC rejected on 19 September 2019.
27. On 11 October 2019, the complainants submitted a request for reconsideration of this ruling.
28. On 23 October 2019, the Conditional Release Panel of the KJC, deciding on this request for reconsideration, approved the request for conditional release. The Conditional Release Panel ordered Mr. Hajdari to be released on 24 October 2019, and for him to remain under supervision of the Kosovo Probation Service throughout the remainder of his sentence, that is until 20 June 2021.
29. On 15 November 2021, the media reported that Mr. Hajdari died on 14 November 2021.

IV. COMPLAINT

30. The complainants claim that EULEX staff members have monitored Mr. Hajdari's situation at all stages of his detention and treatment, and have been present at all judicial proceedings before the Basic Court regarding his requests for temporary suspension of the execution of his sentence and his requests for early release, as well as before the Kosovo Judicial Council Conditional Release Panel regarding his requests for conditional release.
31. The complainants allege that, due to the high-profile nature of the case, and EULEX's particular interest in it, the Kosovo authorities have been inhibited from and/or pressured to refrain from taking appropriate and humane decisions regarding Mr. Hajdari's treatment and release from detention. The complainants claim that officials of the Kosovo Correctional Service and the Kosovo Judicial Council have informed them, off the record, that, because Mr. Hajdari was prosecuted and convicted by EULEX, it is EULEX who is responsible over his case, and Kosovo authorities cannot take any actions without permission from EULEX.
32. In the view of the complainants, care in the family home was the best solution for Mr. Hajdari, as indicated in the medical report of the Hospital and University Clinical Service of Kosovo (HUČSK) of 26 July 2019. The complainants allege that care in the family home was being prevented by EULEX due to its excessive or improper influence over the relevant Kosovo authorities with respect to this case.
33. The complainants allege that both Mr. Hajdari and his wife, Ms. Bici-Hajdari, are victims of a violation of their fundamental rights to protection from inhuman or degrading treatment or punishment as a result of the suffering and hardship inflicted upon them. The complainants allege that EULEX is responsible for their situation and the resultant ill-treatment.
34. The complainants allege violations by EULEX of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), without specifying any particular provisions.

V. SUBMISSIONS OF THE PARTIES REGARDING ADMISSIBILITY

Head of Mission ("HoM")

35. In his submission, the HoM states that EULEX became aware of the fact that Mr Driton Hajdari had health problems in June 2016 when, in line with its mandate to support the Kosovo Correctional Service (KCS) in handling high-profile detainees, the EULEX Correctional Unit (CU) began monitoring his escorts to and back from health care institutions outside of the premises of the correctional facilities. While monitoring Mr. Hajdari's escorts, CU monitors noticed that his health condition had begun to deteriorate. They did not inquire with the authorities about the details of his health condition, since this information is protected by medical confidentiality and the Mission is not and has never been mandated to monitor and advise health care institutions. Whenever approached by Mr. Hajdari and his visiting family members, CU monitors listened to their concerns and advised them to use available legal remedies, such as seeking a temporary suspension of the execution of the sentence, applying for conditional release and filing a complaint to the Kosovo Ombudsperson. CU monitors also explained that any decisions on such remedies were under the sole competence of the relevant judicial and health authorities.
36. The HoM states that after 15 June 2018, EULEX did not have any executive roles or responsibilities in relation to Mr. Hajdari. However, it continued to do everything it could within the limit of its 'non-executive' mandate described below, to promote the fulfilment of his fundamental rights. Since June 2018 EULEX Kosovo has a mandate to monitor selected cases and trials in the Kosovo justice system (a task that is implemented by the Case Monitoring Unit (CMU) within the Monitoring Pillar) and a mandate to support the senior management of the KCS in terms of leadership and management principles by monitoring, mentoring and advising, including a continued EULEX presence in prisons and detention centres.
37. The HoM reiterates that in monitoring the above proceedings, CMU merely observed the sessions. CMU EULEX staff members according to the mandate and in compliance with the monitoring principles (impartiality, neutrality, non-interference) are neither allowed to take any action, or make any intervention or statement in any proceedings, nor to influence any judicial decision.
38. In light of the above, the Mission deems that with regard to the allegations raised by the complainants pertaining to the actions and activities carried out under the EULEX monitoring and advising mandate from 2014 until 2019, when Driton Hajdari was released, the complainants' allegations are inadmissible as they have no connection to EULEX's executive mandate whatsoever. The above actions were carried out in pursuit of the Mission's monitoring and advising mandate, and in full compliance with the principle of non-interference.

VI. THE PANEL'S ASSESSMENT

39. After the complaint was submitted and before the Panel could deliver a decision, one of the complainants, Mr. Driton Hajdari, died. Given the circumstances of the case, and the fact that the standing of the second complainant is unaffected, the Panel has proceeded to consider the admissibility of the complaint.
40. 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 for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), which set out minimum

standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.

41. Before considering the complaint on its merits, however, the Panel has to decide whether to proceed with the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure. One criterion is that the complaint must fall within the Panel's jurisdiction.
42. 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 consideration of the accountability concept in the OPLAN of EULEX Kosovo, the Panel will not review judicial proceedings before the courts in Kosovo.
43. The Panel notes that the subject matter of the complaint is the Mission's alleged interference with the decision making of local authorities during the exercise of its monitoring mandate.
44. It is the view of the Panel that if the Mission in its monitoring activities interferes in the activities and competence of the local authorities in a way that can be interpreted as the Mission acting in an executive manner, these actions (interferences) could fall within the jurisdiction of the Panel as the Mission could then be seen as acting in a manner equivalent to the exercise of executive authority.
45. The complainants, however, have not provided evidence that the alleged interference took place.
46. Mere monitoring through the presence at KCS facilities and in the proceedings is clearly outside the Mission's executive mandate. Monitoring of a case can lead to local authorities' adjusting their behaviour by making sure, to a greater extent than they otherwise would, that they adhere to the relevant legislation and international standards. That is, in part, the purpose of monitoring. When local authorities fail to adhere to the relevant legislation and international standards, the blame cannot be put on the monitors whose role is to identify such shortcomings in the first place. That still holds when representatives of local authorities, as claimed in this case, may allege, inaccurately, that the authority lies with the Mission. Such a claim cannot, in itself, lead to the creation of an executive mandate and the transfer of the authority to the Mission.
47. The Panel wishes to raise its concerns in relation to the handling of Mr. Hajdari's health condition by local authorities. In this connection, the Panel notes that, in the opinion of the Ombudsperson of the Republic of Kosovo, further detention of Driton Hajdari in the conditions and care as specified in the report submitted by the Prison Healthcare Department would constitute a violation of Article 3 ECHR and other aforementioned international human rights instruments. It is imperative that these concerns be addressed by local authorities.
48. In light of the above, it follows that the present complaint falls outside the ambit of the executive mandate of EULEX Kosovo and, consequently, outside of the competence of the Panel, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

FOR THESE REASONS,

The Panel holds, unanimously, that the complaint does not come within the scope of jurisdiction of the HRRP within the meaning of Rule 29, I (d) of its Rules of Procedure.

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

Snježana BOKULIĆ
Acting Presiding Member

Alexander FASSIHI
Member