



INADMISSIBILITY DECISION

Date of adoption: 7 March 2017

Case No. 2014-35

M.N

Against

EULEX

The Human Rights Review Panel sitting on 7 March 2017 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Anna BEDNAREK, Substitute member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Noora AARNIO, 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 21 July 2014. It was filed by M.N. through his authorized representative X.Y.

2. The complainant requested not to have his identity disclosed. Having considered the matter, in particular the nature of the allegations being made, the Panel is satisfied that the request should be granted.
3. On 9 January 2017, Ms Elka Ermenkova recused herself from the case due to a conflict of interests and did not participate in the consideration of the case, in accordance with Rule12(1)(1) of the Panel's Rules of Procedure. She was replaced by Ms Anna Bednarek.
4. On 8 February 2017, the complainant in a letter requested the Panel to hear two witnesses.

II. THE FACTS

5. The complainant was convicted in the so called "Bill Clinton Boulevard bombing" case.
6. On 7 February 2011, the complainant was convicted by the District Court of Pristina of aggravated murder, attempted aggravated murder, and unauthorized ownership, control possession or use of weapons, in the so called "triple murder" case.
7. On 12 October 2011, the Supreme Court of Kosovo confirmed the Judgment.
8. On 24 September 2012, again, in a second appeals procedure the Supreme Court of Kosovo confirmed the judgment.
9. On 31 January 2014, the Supreme Court of Kosovo dismissed as belated the request for protection of legality filed by the Office of the State Prosecutor.

III. COMPLAINTS

10. The complaint claims that due to corruption he did not get a fair trial. On that basis, he asks the Panel to review his case and reopen the proceedings.
11. Moreover, the complainant submits that his co-operation with the investigations by EULEX has put him and his family in danger, and that he is not getting any protection from EULEX.
12. The complainant submits that an EULEX Prosecutor was conducting investigative steps in order to have the "triple murder" case reopened. He submits that since that time the investigator in charge and the Prosecutor were informed by an unspecified individual or entity not to undertake any more action in this case.

13. The complainant claims that he has helped EULEX investigate the matter but that EULEX has left him without any protection. He does not refer to any concrete incident of threat or intimidation, but submits that "...we will take EULEX accountable if something happens to us and our families". He also expresses a general concern about "[w]hat would happen about our safety when EULEX leaves".

IV. THE LAW

14. The complainant does not refer to any specific human rights or human rights provisions as having been breached by EULEX. Based on the tenor of the complaint, the Panel will examine his case under Article 6 (right to a fair trial), Article 2 (right to life) and Article 3 (prohibition of torture) of the European Convention on the Protection of Human Rights and Fundamental Freedoms (the Convention). These provisions, in so far as relevant, read:

Article 6 Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 2 Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 3 Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Equivalent provisions are found in other human rights instruments relevant to the work of the Panel (see, e.g., Articles 7, 6 and 14 of the International Covenant on Civil and Political Rights).

15. 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 in the OPLAN of EULEX Kosovo 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.
16. Before considering the complaint on its merits, the Panel has to decide whether to proceed with it, taking into account the admissibility criteria set out in Rule 29, in conjunction with the Rule 25, of its Rules of Procedure.
17. 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. In accordance with its founding instrument, referred to in paragraph 15 above, Rule 25 further stipulates that the Panel is not competent to review judicial proceedings before the courts of Kosovo.
18. Regarding the request (see, above, paragraph 10) that the Panel should review a case file and reopen the proceedings, the Panel notes that the complainant challenges decisions given by Kosovo courts and appears to challenge the compatibility of these decisions with relevant human rights standards, in particular with the procedural guarantees of the right to fair trial guaranteed by Article 6 of the Convention.

19. 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 has in principle no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. The fact that, as in the present case, EULEX judges sit on the bench does not detract from the courts the character as part of the Kosovo judiciary (see, *inter alia*, *Rifat Kadribasic against EULEX*, no. 2014-09, of 10 November 2014, § 11, *Shaban Kadriu against EULEX*, 2013-27, 27 May 2014, § 17).
20. The complainant has failed to explain how the review and reopening of the proceedings would come within the ambit of the Panel's competence as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo. The Panel has noted on a number of occasions that it would be competent to examine acts and decisions of the public prosecutor where allegations of human rights violations attributed to the prosecutor have not been fully addressed by the competent judicial authorities (see, e.g., *E against EULEX*, 2012-17, 30 August 2013, pars 22 *et seq*). In this particular case, the complaint has failed to satisfy the Panel that the competent Kosovo courts did not fully and appropriately address any human rights arguments that he raised before them.
21. It follows that the issues raised by the complainant do not fall within the ambit of the executive mandate of EULEX Kosovo. Consequently, they are outside of the Panel's competence, as formulated in Rule 25 of its Rules of Procedure and the OPLAN.
22. Regarding the claim (see, above, paragraph 11-13) that EULEX has left him without any protection despite the risk existing for him and his family, the Panel notes the following. First, the complainant has failed to establish that any concrete threats have been made against him or his family and also failed to establish that any such risk, if it exists, would have arisen from his claimed assistance to EULEX (see, for instance, *W.D. against EULEX*, 2015-13, 1 March 2016, § 21 and 22). Secondly, it has not been shown that he asked EULEX for any sort of protection or, if he did, that EULEX acted unreasonably in responding to such request. In those circumstances, having regard to the information before the Panel, that part of the complaint may be said to be manifestly ill-founded.
23. In regard to the complainant's request (paragraph 4 above) for the Panel to hear two witnesses, the Panel need not decide here whether it would have that authority pursuant to Rule 33 of its Rules of Procedure. In the particular circumstances of this case, the Panel is indeed not satisfied that any additional evidence is necessary to decide upon the admissibility of this case.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine part of the complaint as the complaint falls beyond its jurisdiction within the meaning of Rule 29 (d) of its Rules of Procedure, and in regard to the remainder of the complaint, declares it to be manifestly ill-founded pursuant to the Rule 29 (e) of its Rules of Procedure, and therefore

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member