



INADMISSIBILITY DECISION

Date of adoption: 7 March 2017

Case No. 2015-12

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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 Elka ERMENKOVA, 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 15 September 2014.

II. THE FACTS

2. On 7 February 2012, the complainant filed, with the Office of the EULEX Chief Prosecutor, a document entitled "criminal charge" against the President of the Constitutional Court. He claimed that on earlier dates he has filed complaints against various institutions in Kosovo with the Constitutional Court and they have not been properly answered.
3. On 24 February 2012, the complainant received a letter from the Chief EULEX Prosecutor no. 37/2012, dated 23 February 2012, responding that according to the Law on Competence, Selection of Case and Allocation of EULEX Judges and Prosecutors in Kosovo (Law no. 2008/L-053), his complaint (criminal charge) against the President of the Constitutional Court of Kosovo did not fall under the competence of EULEX prosecutors. The complainant was advised that he should get in touch with a qualified lawyer or refer to the Legal Aid Commission in Pejë/Peć.
4. Later in February 2012, the complainant filed a private criminal lawsuit against the President of the Constitutional Court with the Municipal Court of Prishtinë/Priština.
5. On 2 April 2013, the complainant received a Decision no. 803/11 of the Basic Court of Prishtinë/Priština, dated 27 March 2013, rejecting his criminal lawsuit on the grounds that according to the Criminal Code which had entered into force on 1 January 2013 the Prosecutor had an exclusive right to file criminal charges.
6. In April 2013, the complainant filed an appeal against the above-mentioned Decision.
7. On 2 July 2013 the complainant received a Decision no. PA1.407/2013 of the Court of Appeals, dated 15 May 2013, rejecting his appeal.
8. After several more submissions to the Office of State Prosecutor and the Court of Appeals, on 14 June 2014 the complainant filed a complaint with EULEX in order to undertake legal measures against the President of the Constitutional Court. He states that he did not receive a reply to that request.
9. On 4 September 2014, he requested EULEX to review his complaint, and he states that again he received no reply.

III. COMPLAINTS

10. The complainant is appealing to the Panel to hold that the State Prosecutor, Basic Court of Prishtinë/Priština and Court of Appeals have violated the law. He further asks the Panel to return the case to

the Court of Appeals for retrial and to instruct the Court of Appeal as to the outcome of the Decision. The claimant does not refer to any violations committed by either the EULEX Chief Prosecutor or any other EULEX Prosecutor.

11. Even though the complainant did not refer to any specific human rights or human rights provisions, it is apparent from the content of the complaint that his allegations are related to alleged violation of Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“The Convention”).

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 merits 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.
14. 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.
15. The Panel notes that the complainant’s grievance pertains to proceedings before the State Prosecutor, Basic Court of Prishtinë/Priština and Court of Appeals of Kosovo. The complainant also mentions the EULEX Chief Prosecutor and his complaint with EULEX but he makes no request or claim of a violation related to these.
16. 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 (see *Dekart Shkololli against EULEX*, 2015-3, 29 February 2016, para. 10, *Qerim Begolli against EULEX*, 2014-27, 2 February 2015, para. 12, *Mensur Fezaj against EULEX*, no. 2014-20, 26 August 2014, paras. 9-10).
17. The Panel notes that even assuming that an EULEX Judge had been a member of the Panel issuing the impugned decisions, the Panel has

repeatedly found that, according to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo. The Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts (see, among many others, *Fahri Rexhepi against EULEX*, no. 2014-19, 10 November 2014, para. 12; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, para. 13).

18. It follows, therefore that the complaint falls outside of the ambit of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

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