



INADMISSIBILITY DECISION

Date of adoption: 21 April 2015

Case No. 2014-24

J.Q.

Against

EULEX

The Human Rights Review Panel sitting on 21 April 2015.
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Katja DOMINIK, Member

Assisted by
Mr John J. RYAN, Senior 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 27 March 2014. The complainant asked for his name to be withheld. The Panel granted his request.

II. THE FACTS

2. On 7 March 2013, the Basic Court of Pejë/Peč convicted the complainant of murder, unauthorised possession, control and use of weapons and sentenced him to twenty four years' and six months' imprisonment. Both the complainant and the injured party, apparently the family of the victims, appealed.
3. On 29 August 2013, the Court of Appeal in Pristina partly modified the first-instance judgment, changed the legal qualification of the offence and upheld the remainder of it.
4. On 20 November 2013, upon the complainant's appeal, the Supreme Court of Kosovo partly modified the judgment of the Court of Appeal and changed the legal qualification of the offence. It upheld the remainder of the judgment
5. The complainant lodged a request for protection of legality with the Supreme Court on 28 January 2014. It is not clear whether his request has been examined.

III. COMPLAINTS

6. Without invoking any particular provisions of the international documents for the protection of human rights, the complainant submits that he was wrongfully convicted.

IV. THE LAW

7. 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 which must be guaranteed by public authorities in all democratic legal systems.
8. Before considering the complaint on its merits, the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
9. 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.

10. 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, in principle it has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Even assuming that EULEX judges were involved in the case at any stage of proceedings, the Panel has held on many occasions that the fact that EULEX judges sit on the bench of any given court does not detract from its character as part of the Kosovo judiciary (see, among many others, *Rifat Kadribasic against EULEX*, no. 2014-09, of 10 November 2014, § 11, *Shaban Kadriu against EULEX*, 2013-27, 27 May 2014, § 17). However, the Panel observes that it has not been argued, let alone shown, that EULEX has been in any way involved in the alleged violations of the complainant's rights.
11. 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 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