



INADMISSIBILITY DECISION

Date of adoption: 23 November 2011

Case No. 2011-16

Mr. Avdyl Smajli

Against

EULEX

The Human Rights Review Panel sitting on 23 November 2011 with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, Member
Ms. Anna BEDNAREK, Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Leena LEIKAS, Legal Officer
Ms. Stephanie SELG, 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 of 9 June 2010,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 1 May 2011. The complaint was filed on behalf of the complainant by a family member.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, and as apparent from documents available to the Panel, may be summarized as follows.

Background

3. On 24 June 2010 a shooting incident happened in the City Hall of Skenderaj/Srbica. The complainant Avdyl Smajli, his cousin Samedin Smajli and four (4) other persons were involved. According to the complainant he used his gun to defend himself and his cousin against the four others who were armed as well. Three of the four other persons got injured.
4. On 9 July 2010 the complainant and his cousin were arrested but none of the four (4) other persons involved. The complainant claims that this was due to a case of corruption within the legal system.
5. On the same day a pre-trial Judge of the District Court of Mitrovicë/Mitrovica issued a ruling on the detention on remand for one (1) month on the grounded suspicion of attempted aggravated murder and unlawful possession and use of weapons against the complainant and his cousin. Since then, the complainant did not get any other information about the progress in the proceedings of the case.
6. According to the complainant he and his cousin are still detained, more than fifteen (15) months later, without indictment.

Contact with EULEX

7. On 11 March 2011 the complainant's family member sent a letter to the EULEX Head of Justice Component. He asked EULEX to intervene because "EULEX deals with corruption and sees to it that court proceedings are handled in a legitimate way".
8. On 1 April 2011 he received a response from a EULEX Legal Officer from the Office of the Head of Justice. EULEX stated that dealing with complaints or requests for legal advice from individuals does not fall, as such, in the EULEX mandate. No further explanation or information about the case was given to the complainant.

Additional information

9. On 26 October 2011 the Panel filed a request for information with the EULEX Head of Mission.
10. On 15 November 2011 the EULEX Office of the Head of Justice provided information of the criminal case in question to the Panel:
 - a) *The indictment in this case was filed on 9 December 2010 and it was confirmed on 20 January 2011 by a local judge in Mitrovicë/Mitrovica District Court.*
 - b) *On 15 June 2011 EULEX took over the case (in accordance with the criteria set out in the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law no. 03 L/053).*

- c) *The case is now being prepared for the main trial. The trial has been scheduled for 5 to 8 December 2011. The trial panel will be composed of three EULEX judges.*
- d) *The EULEX Prosecutor was also present in the takeover hearing, thus EULEX District Public Prosecution Office is already informed of the case.*

III. COMPLAINTS

- 11. The complainant claimed that the investigation and judicial proceedings are not conducted in an independent and fair way. He requested that EULEX should take over the case as foreseen in the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law no. 03 L/053).

IV. THE LAW

- 12. 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 (ROP).
- 13. The Panel can only examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors as outlined in Rule 25, paragraph 1 of its ROP.
- 14. According to the said Rule, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot review judicial proceedings before the courts of Kosovo. In particular, it is not its function to deal with errors of fact or law allegedly committed by a Kosovo court unless and in so far as they may have infringed rights and freedoms protected by international human rights law applicable in Kosovo.
- 15. The Panel notes first and foremost that the complainant does not claim to be a victim of human rights violation committed by EULEX. The complainant requests, in essence, that EULEX takes over the case. This has been done with decision from 15 June 2011.
- 16. Furthermore, the indictment in the case has already been lodged before a court and the case is now being prepared for trial. The complaint relates to judicial proceedings before a court of Kosovo. The fact that the case has been taken over by EULEX under the provisions of Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law no. 03 L/053) does not detract from the fact that the acts of courts composed in their entirety of EULEX judges remain the courts of Kosovo. The Panel notes that it is not entitled to review the judicial proceedings (as

mentioned above, Para 14.). Therefore the complaint does not fall within the ambit of the Panel's mandate.

17. Furthermore, the Panel notes in passing that the person who filed the complaint did not produce the necessary documents certifying his capacity to represent the complainant as foreseen in Rule 25, Para 5 of the ROP. However, if in the future the complainant wishes to submit to the Panel a complaint on his own behalf claiming that his human rights have been violated by EULEX in the performance of its executive mandate, he may file a new complaint with the Panel or through an authorized representative according to Rule 25, Para 1 and 5 and Rule 17 (a) of the ROP¹.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

holds that it lacks the competence to examine the complaint,

finds the complaint manifestly ill-founded within the meaning of Rule 29 (d) of its Rules of Procedure.

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Senior Legal Officer

Antonio BALSAMO
Presiding Member

¹ Rule 25, Para 1 Rules of Procedures: 1. A complaint may be filed by any person other than EULEX Kosovo personnel who claims to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate [...].

Rule 25, Para 5 Rules of Procedures: Where a Complainant is represented in accordance with the provisions of Rule 17 a document certifying his/her capacity to represent the Complainant must be presented to the Panel by the representative.