



INADMISSIBILITY DECISION

Date of adoption: 24 May 2018

Case No. 2017-05

Hysni Gashi

Against

EULEX

The Human Rights Review Panel sitting on 24 May 2018, with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Anna BEDNAREK, 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 of 9 June 2010,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered with the Panel on 3 August 2017.

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 summarised as follows:

Criminal proceedings against the complainant

3. The complainant and one other were suspected of shooting to death two persons and attempting to kill several other persons on the terrace of a café in Shtime/Štimlje municipality on 22 April 2006.
4. On 10 January 2007, an indictment was filed against the complainant by the Public Prosecutor at the District Court of Pristina.
5. The case was taken over by EULEX Kosovo in December 2008, following a request by the complainant. By that time some eight (8) court hearings had taken place and a crime scene visit had been conducted.
6. On 11 July 2008, the District Court of Pristina issued a decision as follows:
 - I. The house arrest of the defendant Hysni Gashi was terminated as he was released pending trial.
7. The main trial started in the District Court of Pristina before a panel composed of two EULEX judges and a Kosovar judge on 11 February 2009. A further six (6) court hearings were held thereafter.
8. On 27 March 2009, the complainant was convicted by the District Court of Pristina for incitement to commit aggravated murder.
9. He was sentenced to twenty (20) years of imprisonment. The time which he had spent under house arrest was taken into account in the computation of his prison sentence.
10. The complainant's counsel filed an appeal against the verdict on 14 July 2009. The counsel proposed to have the sentence amended and submitted that his client should be acquitted of all charges. It was submitted by counsel that the verdict contained essential violations of the Kosovo Criminal Procedure Code, that there was an erroneous and incomplete establishment of the facts, that there was a violation of the Kosovo Criminal Code and that the sentence imposed upon the accused was to be challenged accordingly.
11. The injured parties, E.F. and G.B., filed separate appeals with the Supreme Court of Kosovo with a request that the sentence be modified and that a longer term of imprisonment be imposed on the complainant.
12. On 19 April 2011, the complainant's appeal, as well as the appeal of the injured parties were both rejected by the Supreme Court and the District Court judgment against the complainant was upheld in full.

Previous complaint to the Panel

13. On 30 June 2011, the complainant, together with Feriz Gashi, lodged a complaint with the Panel.

14. The complaint concerned the same general facts and the same criminal proceedings as those complained of in the present case. However, at the time, the complainants did not inform the Panel about the judgement of the Supreme Court.
15. Both complainants alleged that the criminal proceedings against them had been unfair and that they had been wrongly convicted.
16. On 23 November 2011, the Panel rendered its decision regarding this earlier complaint. It found that the complaint had been lodged outside of the time-limit laid down by its Rules of Procedure and that, in any event, it lacked competence to examine the complaint. The Panel therefore declared the complaint inadmissible (see, [*Hysni Gashi and Feriz Gashi against EULEX*](#), no. 2011-22, 23 November 2011).

III. COMPLAINTS

17. The complainant alleges that the presiding member of the trial panel of judges, a EULEX judge, acted inappropriately, that the court made an unlawful decision despite all the evidence pointing to his alleged innocence and that EULEX Kosovo supported and protected criminals for its own interests.
18. Whilst the complainant does not refer to any particular fundamental rights, which he claims was violated, it is apparent from the tenor of his complaint that he must have been referring to Article 6 of the European Convention of Human Rights/Article 14 of the International Covenant on Civil and Political Rights.

IV. THE LAW

19. 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.
20. The Panel will first refer to the facts and complaints relating to the proceedings before the judgement of the Supreme Court of 19 April 2011. It notes that the Panel has already considered this part of the complaint in the case no. 2011-22 and that it rendered an inadmissibility decision in relation to those. The complainant has not put forth any new information that would warrant a reconsideration of that decision by the Panel. It follows that this part of the complaint is substantially the same as a matter already examined by the Panel and must be declared inadmissible in accordance with Rule 29, paragraph 1(a) of the Panel's Rules of Procedure.
21. As regards the remainder of the complaint, the Panel reiterates that, 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 Kosovo.

22. According to the said Rule, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot in principle review judicial proceedings before the courts of Kosovo. The Panel has no jurisdiction in principle in respect of either administrative or judicial aspects of the work of Kosovo courts, the legislation applied by them or the decisions taken by them. Decisions of the Kosovo courts are subject to appeals and extraordinary legal remedies available under the applicable law. It is also noted that the complainant has exhausted the appeal procedures available to him in this case. In particular, it is not the function of the Panel to deal with alleged errors of fact or law committed by a Kosovo court said to have resulted in the infringement of rights and freedoms protected by international human rights law applicable in Kosovo, (see *inter alia*, *Radunovic against EULEX*, 2014-02, 12 November 2015, at par. 16; *Krasniqi against EULEX*, 2014-33, 21 April 2015, at par. 20; *Ibrahimi against EULEX*, 2014-05, 21 April 2015, at par. 23 and *Selmani against EULEX*, 2014-23, 10 November 2014, at par. 12).
23. This complaint concerns judicial proceedings conducted by a court in Kosovo. The fact that EULEX judges sit on the bench of a court assigned to examine a case does not detract from the fact that the courts form part of the Kosovo judiciary (see, *inter alia*, *Shpresim Uka against EULEX*, 2016-06 & 2017-04, 17 October 2017, par. 22; *Z.A. against EULEX*, 2014-36, 29 February 2016, par. 17; *K.P. against EULEX*, 2014-31, 21 April 2015, par. 13; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, par. 13).
24. Consequently, the issues raised in the present complaint do not fall within the ambit of the executive mandate of EULEX Kosovo, as formulated in Rule 25 of the Rules of Procedure and the OPLAN of EULEX Kosovo.
25. Furthermore, in accordance with Rule 25 (3) of the Panel's Rules of Procedure, a complaint must be submitted to the Panel within six months from the date of the alleged violation (see e.g. *Axhemi Zyhdi against EULEX*, 2016-05, 17 October 2017 pars 14-16; *Syla against EULEX*, 2015-10, 1 March 2016, par. 16).
26. The complaint of Hysni Gashi in relation to the 19 April 2011 judgement of the Supreme Court was filed with the Panel on 3 August 2017, i.e., more than six years after the relevant events. In accordance with Rule 25, paragraph 3, of the Rules of Procedures the complaint should have been lodged no later than 19 October 2011. Therefore the complaint does not satisfy the admissibility criteria set out in Rule 29 of its ROP.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY,

finds that the part of the complaint relating to the facts preceding the appeal to the Supreme Court of 19 April 2011 is substantially the same as the matter already examined by the Panel, within the meaning of Rule 29, paragraph

1(a) of its Rules of Procedure and the complainant has failed to establish any reason for reconsideration of the decision in accordance with Rule 43(3);

finds that the remainder of the complaint is manifestly ill-founded within the meaning of Article 29, paragraph 1(e) of its Rules of Procedure, and that it fails to comply with Article 25(3) of the Rules regarding time-limit for filing of a complaint, and therefore

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


John J. RYAN
Senior Legal Officer


Magda MIERZEWSKA
Presiding Member