



INADMISSIBILITY DECISION

Date of adoption: 30 August 2013

Case No. 2013-02

Arsim Krasniqi

Against

EULEX

The Human Rights Review Panel sitting on 29 and 30 August 2013 with the following members present:

Ms. Magda MIERZEWSKA, Presiding Member
Mr. Guénaél METTRAUX, Member
Ms. Katja DOMINIK, Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Joanna MARSZALIK, Legal Officer
Mr. Florian RAZESBERGER, 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 19 February 2013.

II. THE FACTS

1. On an unspecified date, the complainant was convicted of murder and sentenced to twenty years of imprisonment. He has been imprisoned since 21 January 2007, initially in the Dubrava Correctional Centre.
2. On 28 February 2012, he was transferred to the Prizren Detention Centre. He claims that the reason for his transfer was that he was suspected of illegal possession of firearms. He maintains that when he was transferred he was not allowed to take his personal belongings with him.
3. The complainant submits that he has since been transferred three more times between different detention centres.
4. Since 3 September 2012, the complainant has been held in the Pejë/Peć Detention Centre. He claims that his personal belongings were lost during his last transfer. He also submits that he is kept in a cell with detainees on remand.

III. COMPLAINTS

5. The complainant submits that he is being harassed and discriminated against by prison authorities. He complains that he has been transferred between prisons without any possibility of appealing the decisions of transfer. He also submits that being kept in the same cell with other detainees constitutes a violation of his human rights.

IV. THE LAW

6. 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.
7. According to Rule 25, paragraph 1 of the Rules of Procedure the Panel can examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.
8. The Panel notes that the complainant's grievance concerns his alleged ill-treatment in prison. The complaint falls to be examined under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) which reads as follows:

Article 3

Prohibition of torture

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

9. The Panel first observes that it can only examine complaints lodged within six months from the date of the alleged violation as set out in Rule 25 paragraph 3 of the Rules of Procedure. When examining this part of the present complaint, the Panel shall therefore exclude from its considerations any alleged violations of the complainant's rights which is said to have occurred prior to 19 August 2012.
10. In so far as the complainant may be said to relate to events that occurred after that date, the Panel observes that it has not been argued, let alone shown, that EULEX was in any way involved in what the complainant describes as the violation of his rights. It follows from 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 mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo (compare, *Halili against EULEX*, no. 2012-08, 15 January 2013, par. 24 et seq.). The Panel could declare the complaint inadmissible on that basis alone.
11. In any event, concerning the substance of the complaint, the Panel notes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see, among many other authorities, *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 162, or, *Iwańczuk v. Poland*, no. 25196/94, § 50, 15 November 2001). As for torture, it requires demonstration of deliberate inhuman treatment causing very serious and cruel suffering inflicted with a view to achieve one of the recognized prohibited purposes (see, e.g., *El Masri v The Former Republic of Macedonia* [GC], no. 39630/09, § 197, and authorities cited therein).
12. The complainant submits that he has been held in one cell with persons detained on remand. He fails to demonstrate how this would amount to the sort of ill-treatment foreseen in Article 3. As regards the alleged loss of the complainant's personal belongings, the Panel is of a view that, although this could arguably have caused the complainant some distress, this incident cannot be said to have caused suffering which would amount to inhuman or degrading treatment or torture. Furthermore, the Panel has no information that this was done intentionally nor that the authorities, if seized of the matter, failed to act diligently and in timely fashion in addressing this matter.
13. The Panel considers therefore that the complainant has not provided any evidence which would allow it to conclude that the treatment he complains of could constitute inhuman or degrading treatment or torture within the meaning of Article 3 of the European Convention. Based on the information available to the Panel, the complaints are therefore unfounded.

14. The Panel notes finally that the complainant could raise any issue regarding allegations of ill-treatment with the competent prison and prosecutorial authorities.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY,

holds that it lacks competence to examine the complaint, finds the complaint manifestly ill-founded within the meaning of Article 29 (e) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member