



DECISION ON REQUEST FOR RE-EXAMINATION

Date of adoption: 10 November 2014

Case No. 2014-04

Tomë Krasniqi

Against

EULEX

The Human Rights Review Panel sitting on 10 November 2014 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
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 as last amended on 15 January 2013,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 3 February 2014.

2. On 27 May 2014, the Panel found the complaint inadmissible. It was noted that the complainant challenges the Kosovo courts' decisions as well as the view taken by the EULEX judge that the complainant's case did not fall within EULEX's jurisdiction.
3. With respect to the former, the Panel observed that it was not shown or even argued that EULEX judges had been involved in any capacity in the rendering of those decisions (see *Mustafa against EULEX*, 2011-03, 8 April 2011, at par. 22).
4. With respect to the latter, the Panel found that there was no indication that the EULEX judge had infringed upon the human rights of the complainant when replying to his complaint.
5. Thus, the Panel found that it lacked competence to examine the complaint, as it fell outside its jurisdiction within the meaning of Rule 29 (d) of its Rules of Procedure.
6. On 9 June 2014, the complainant requested the re-examination of his complaint within the meaning of Rule 42 of the Panel's Rules of Procedure.
7. On 17 June 2014, the complainant provided the Panel with further information.

Request for re-examination

8. The complainant asks the Panel for a re-examination of its decision of 27 May 2014, submitting the judgment of the Supreme Court of Kosovo dated 12 February 2014, which rejects his request for revision of the Appeal's Court judgment of 7 October 2013.
9. The complainant submits that the Panel has jurisdiction over his case, in particular as "*it was established by competent authorities exclusively to assess violations of the right of the individual or a group of individuals, no matter by whom those rights are violated, by any public or state authority that created those violations*".
10. The Panel notes that the re-examination procedure provided for in Rule 42 is intended to provide a procedural mechanism whereby a complainant can seek re-examination of an inadmissibility decision only where a new fact which he or she could not reasonably have known of at the time of the initial complaint would have had a decisive influence on the Panel's findings (see *Y against EULEX (re-examination)*, no. 2011-28, paras. 7-8).
11. In the present case, the complainant has not presented evidence of a new fact as defined above.
12. The Panel reiterates that, according to Rule 25, paragraph 1, of its Rules of Procedure, based on the accountability concept in the

OPLAN of EULEX Kosovo, it is not competent in principle to review judicial proceedings before the courts of Kosovo. Moreover, the Panel has already found that the fact that EULEX judges sit on the bench of a given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, inter alia, *Maxhuni against EULEX*, no. 2013-24, par. 12; 7 April 2014, par. *Halili against EULEX*, no. 2012-08, 15 January 2013, par. 21; *Pajaziti against EULEX*, no. 2012-05, 4 October 2012 pars. 9-10; *Dobruna against EULEX*, no. 2012-03, 4 October 2012, par. 12).

13. It follows from the above that the complainant has failed to establish that the conditions for re-examination of the Panel's 27 May 2014 inadmissibility decision were met in this case.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY

Rejects the complainant's request for re-examination.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member