



INADMISSIBILITY DECISION

Date of adoption: 10 November 2014

Case No. 2014-23

Shaip Selmani

Against

EULEX

The Human Rights Review Panel sitting on 10 November 2014 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 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.

II. THE FACTS

2. The facts of the case as submitted by the complainant can be summarized as follows:

3. On 17 June 2011, the District Court of Pristina sitting in a mixed Panel including EULEX judges found the complainant guilty of having participated in an organized crime group within the meaning of Article 274 par. 2 of the Provisional Criminal Code of Kosovo (PCCK), and sentenced him to eight years of imprisonment. The complainant was acquitted of the charges of co-perpetration in the smuggling of migrants in accordance with Article 138 par. 6 in conjunction with Article 23 of the PCCK.
4. The Public Prosecutor did not appeal against the judgment.
5. On an unspecified date, the complainant appealed against the judgment.
6. On 2 October 2011, the Supreme Court of Kosovo sitting as a mixed Panel including EULEX judges amended the judgment of the District Court of Pristina, finding the complainant "*guilty of having committed the offence of Organized Crime contrary to Article 274 Par. 4 'in conjunction with the offence of Smuggling of Migrants contrary to Article 138 Par. 6 read with Par 1 of the PCCK'*".
7. On an unspecified date, the complainant filed a request for protection of legality as an extraordinary legal remedy with the Supreme Court. He has yet to receive a decision regarding this application.

III. COMPLAINTS

8. In essence, the complainant asks the Panel to determine if there are relevant human rights violations and to obtain the complainant's release from prison.

IV. THE LAW

9. 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 and the International Covenant on Civil and Political Rights, which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.
10. 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.
11. 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.

12. 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. The fact that EULEX judges sit on the bench of the SCSC does not detract from its character as part of the Kosovo judiciary (see, *inter alia*, *Krapi against EULEX*, 2014-22, 26 August 2014 at par. 12; *V. against EULEX*, 2013-23, 26 May 2014, par. 10; *E against EULEX*, 2012-17, 30 August 2013 at par. 25; *Halili against EULEX*, 2012-08, 15 January 2013, par. 21; *Pajaziti against EULEX*, 2012-05, 4 October 2012 pars. 9-10; *Dobruna against EULEX*, 2012-03, 4 October 2012 par. 12; *Zeka against EULEX*, 2012-02, 4 October 2012 par. 21). As a result, the Panel is not empowered, in principle, to review the lawfulness of judicial decisions such as the one complained of in this case.
13. It follows that the complaint do not fall within the ambit of the Panel's mandate, 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