



INADMISSIBILITY DECISION

Date of adoption: 01 March 2016

Case no. 2015-13

W.D.

against

EULEX

The Human Rights Review Panel sitting on 29 February 2016 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Katja DOMINIK, Member

Assisted by
Mr Paul Landers, 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 as last amended on 15 January 2013,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 14 December 2015.

II. THE FACTS

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

3. In late August 2012, the complainant made a report to EULEX against S.H. who was described as "*the Chief of the group of the Assembly of LDK*".
4. It is alleged that S.H. asked the complainant for a bribe (consisting of a car or 30,000 Euros) in order to change usage of the complainant's land from agricultural land to development. The complainant refused to pay. As a result, he said he was assaulted.
5. The complainant reported the matter to EULEX police and stated that he was offered protection from EULEX. He said that investigators then wired him up and he continued to deal with the suspect whilst pretending to go along with the alleged scheme of S.H. and his associates, A.A. and M.R. The complainant said he obtained a car and met with S.H., A.A. and M.R. on 5 September 2012. The resulting tape recording of the conversation was then sent to EULEX Translation Pool at around 14:30 on the same date. At 15:30, within an hour of the incriminating tapes going to the Translation Pool of EULEX, S.H. is said to have phoned A.A. in an agitated manner saying he did not want to buy the car. The complainant infers from this that the recording must have been leaked by the EULEX Translation Department.
6. It is submitted that S.H., A.A. and M.R. were all being investigated for corruption, but that charges were filed only against A.A. and M.R.

III. COMPLAINTS

7. The complainant alleges violations of the following provisions of the European Convention on Human Rights and Fundamental Freedoms (The Convention): Articles 3, 6 and 8 of the Convention.
8. In particular, the complainant asserts that the content of the wired conversation had been leaked by EULEX's Translation Department thereby putting his security being at risk.
9. The complainant also alleges that the translation made of the taped conversation does not accurately reflect the agitation of S.H. As a result, he says, the Dutch Prosecutor dismissed the case against S.H. based on an inadequate translation. The case was then transferred to an Italian Prosecutor who refused to further consider S. H.'s case on the basis that an Indictment had already been filed.
10. The complainant also alleges that Italian Prosecutor was rude, unpleasant and would not hear any representation from him that the leaked recording had to be investigated.
11. The complainant claims that no one in EULEX showed any concern for him and the effect of the leak on his life and that of his family.
12. As a result, the complainant says that he and his family have been left in a very vulnerable position. The complainant asserts that EULEX Prosecutor failed to deal with the case and just handed it over to a local Prosecutor. It has now been two years since the Indictment was filed and the case has never been heard.

13. The complainant states that his Articles 3, 6 and 8 rights as guaranteed under the Convention have been violated by EULEX.

IV. THE LAW

14. 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 (the Convention) 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.
15. Before considering the complaint on its merits, the Panel must decide whether to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
16. According to Rule 25, paragraph 1, of the Rules of Procedure, the Panel can examine complaints relating to alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.
17. The Panel has already held that the actions of EULEX prosecutors or the police taken within the context of criminal investigation are part of the executive mandate of EULEX Kosovo and therefore fall within the ambit of the Panel's mandate (see, for instance, Z against EULEX, 2012-06, 10 April 2013, at par. 32; W against EULEX, 2011-07, 5 October 2012 at par. 21; Hoxha against EULEX, 2011-18, 23 November 2011 at par. 22; Slobodan Martinović against EULEX, 2011-11, 23 November 2011 at par. 16)
18. The Panel has further held that actions or omissions by the prosecutors during the investigative phase of criminal proceedings cannot be considered as being made in the context of "judicial proceedings" (see *Thaqi v. EULEX*, 2010-02, 14 September 2011, par. 64). In this regard, the Panel held that "the actions and omissions of EULEX prosecutors [...] before the filing of indictment may fall within the ambit of the executive mandate of EULEX" (see *Z against EULEX*, 2012-06, 10 April 2013, at par.33; *Thaqi v. EULEX*, 2010-02, 14 September 2011, par. 93).
19. The current case relates to the alleged actions/omissions of EULEX Prosecutors at the investigative stage. Having considered the actions/omissions complained of, the Panel is of the view that the complaint does fall, in principle, within its jurisdiction.
20. The Panel notes that the complainant firstly alleges that the content of the wired conversation was leaked by EULEX's Translation Department. Having considered the evidence provided by the complainant, the Panel concludes that there is no sufficient evidence to accept that there was a leak of the recorded conversation and that any leak originated from EULEX.
21. Having reviewed the material and information provided by the complainant, the Panel is not satisfied that he has substantiated the suggestion that any of the actions and/or omissions attributed by him to EULEX amounted to or

involved a violation of his fundamental rights. Therefore, the Panel considers these allegations to be manifestly ill-founded.

22. Regarding the other aspects of the complaint, the Panel is not satisfied that the allegations have been adequately substantiated by the complainant or, where they have, that they would amount to a violation of his fundamental rights. These aspects of the complaint are, therefore, also manifestly ill-founded.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

Declares that the complaint is manifestly ill-founded within the meaning of Rule 29. 1. (e.) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSABLE

For the Panel,

Joanna MARSZALIK,
Legal Officer

Magda MIERZEWSKA,
Presiding Member