



INADMISSIBILITY DECISION

Date of adoption: 17 October 2017

Case no. 2016-25

Hilmi Krasniqi

against

EULEX

The Human Rights Review Panel sitting on 17 October 2017 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Elka ERMENKOVA, Member

Assisted by
Mr John J Ryan, Senior 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 with the Panel on 20 July 2016.

II. THE FACTS

2. The complaint relates to the complainant's conviction for aggravated murder handed down by the Basic Court, Pristina, and the sentence he received in relation to it and against which he appealed.
3. The file submitted to the Panel by the complainant did not contain any of the Judgments referred to in the complaint and the Secretariat obtained these Judgments from the Administrators of the Basic Court of Pristina and the Court of Appeals as well as clarification of the Decision from the Constitutional Court of Kosovo.

4. On 18 October 2013, the Basic Court, Pristina, Department of Serious Crimes, found the complainant guilty of aggravated murder and sentenced him to 22 years of imprisonment.
5. On 27 March 2015, the Court of Appeals rejected an appeal by the complainant against the severity of his sentence, allowed the appeal lodged by the prosecutor and increased the sentence to 25 years of imprisonment.
6. The complainant submitted a referral to the Constitutional Court on 26 May 2016 and the Constitutional Court declared the referral inadmissible on 17 February 2017 because it had been filed out of time.

III. COMPLAINTS

7. The complaint relates to criminal proceedings before the Basic Court, Pristina that culminated in a judgment of the Court of Appeals of 27 March 2015.
8. The complainant alleges that one of the EULEX trial Judges was not properly assigned to the case by the President of EULEX Judges. The complainant further alleges that he was not allowed to address the court during the trial and that he therefore could not effectively defend himself. This resulted in an alleged unfair decision in which he was sentenced to imprisonment for a crime which he allegedly did not commit. The complaint therefore appears to pertain to an alleged violation of the Complainant's fair trial rights under Article 6 of the European Convention of Human Rights ("the Convention") (and Article 14 of the International Covenant on Civil and Political Rights).

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 the 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 alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.

12. The complaint relates to criminal proceedings in the Basic Court, Pristina and subsequent appeals. It generally involves allegations of unfairness, a suggestion that one of the EULEX trial Judges was not properly assigned to the case and that the complainant was denied the possibility of addressing the court.
13. 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, it cannot in principle, review judicial proceedings before the courts of Kosovo (*Z.A. against EULEX*, 2014-36, 29 February 2016, para. 17 and references cited). The fact that EULEX judges sit on the bench does not detract from the fact that they are part of the Kosovo judiciary (see, inter alia, *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).
14. It therefore follows that the complaint falls outside the ambit of the mandate of the Panel, as formulated in Rule 25 of its Rules of Procedure.

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