



INADMISSIBILITY DECISION

Date of adoption: 17 October 2017

Case No. 2017-03

Alfred Bobaj

Against

EULEX

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

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

Assisted by
Mr John 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 HUMAN RIGHTS REVIEW PANEL

1. The complaint was registered with the Panel on 10 May 2017.

II. THE FACTS OF THE CASE

2. The facts of the case as submitted by the complainant can be summarised as follows:
3. The complainant, together with his *ex-officio* lawyer, negotiated a guilty plea agreement with a Kosovo Prosecutor. The agreement, as he understood it to be at that time, was that he would be sentenced to fifteen (15) years of imprisonment. He allegedly was not told that by signing the agreement he would waive his right to appeal. Nor was his lawyer apparently aware of this fact.
4. On 5 January 2016, the Basic Court, Prizren, Department of Serious Crimes, sentenced the complainant to seventeen (17) years of imprisonment.
5. The complainant appealed against the judgment and on 15 March 2016, the Court of Appeals declared the appeal to be inadmissible.
6. By letter of 31 October 2016, the complainant sought to have the matter reviewed by the Supreme Court of Kosovo.
7. On 30 January 2017, the Supreme Court rejected as ungrounded the request of the complainant and upheld the judgment of the Basic Court, Prizren. At no stage of judicial proceedings was EULEX involved in the examination of the case.
8. By a letter of 24 February 2017 to the President of the Basic Court, Prizren, the complainant expressed his concerns with regard to alleged irregularities in the proceedings before that court.
9. On 13 March 2017, the President of the Basic Court, Prizren, replied to the letter and informed the complainant that the alleged irregularities in the sentencing fell outside his jurisdiction. The President also advised the complainant that he could avail himself of the legal remedies prescribed in the Criminal Procedure Code of Kosovo.
10. The complainant further claimed that he filed a complaint with EULEX in order to request that the prosecutor be changed i.e. that a EULEX prosecutor should take the case over.

II. COMPLAINTS

11. The complainant submitted that he had a personal problem of an unspecified nature with the Kosovo Prosecutor and that this had had an adverse effect on the outcome of the case. He further complained, without invoking any particular provisions of the international instruments for the protection of human rights, about the outcome and conduct of his case. It can be assumed that the complainant alleges violations of the following articles: Article 6 of the European Convention of Human rights ("the Convention")/Article 14 of the International Covenant on Civil and Political Rights ("ICCPR") (fair trial) and Article 13 ECHR/Article 2(3)(a) ICCPR (denial of effective remedy).

IV. THE LAW

12. 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 the human rights to be guaranteed by public authorities in all democratic legal systems.
13. Before considering the complaint on its merits, the Panel must decide whether or not to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
14. 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.
15. The Panel notes that the complainant's grievances concern, in essence, a challenge to the severity of the sentence that he received in the first instance and which was thereafter upheld.
16. The Panel reiterates that, according to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot, in principle, review judicial proceedings

before the courts of Kosovo. It consequently has no jurisdiction in respect of the procedural or judicial aspects of the work of Kosovo courts.

17. Furthermore, in the light of the documents submitted to the Panel, it has not been shown that the EULEX Prosecutors played any part in the examination of the complainant's case.

18. Therefore, the matter complained of falls outside of the competence of the Panel, as formulated in Rule 25 of its Rules of Procedure (*Shaip Gashi v. EULEX*, 2013-20, 26 November 2013 para. 9; *Jovanka, Dragan and Milan Vuković against EULEX*, no. 2013-18, 7 April 2014, paras. 11-12).

FOR THESE REASONS

The Panel unanimously holds that it lacks competence to examine the complaint under Article 29 (d) of its Rules of Procedure, and therefore

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


John RYAN
Senior Legal Officer




Magda MIERZĘWSKA
Presiding Member