



## **INADMISSIBILITY DECISION**

**Date of adoption: 24 May 2018**

**Case No.: 2017-06**

**Feriz Gashi**

**Against**

**EULEX**

The Human Rights Review Panel sitting on 24 May 2018, with the following members present:

Ms Magda MIERZEWSKA, Presiding Member  
Mr Guénaël METTRAUX, Member  
Ms Anna BEDNAREK, Member

Assisted by  
Mr John J. RYAN, Senior 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 of 9 June 2010,

Having deliberated, decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was registered with the Panel on 6 September 2017.
2. The complainant requested that the Panel withhold the details of his identity. However, he did not provide any grounds that would support his request. Nor has the Panel identified any risk to the complainant that would arise from the public disclosure of his identity. In that respect, the Panel notes that the complainant previously lodged a complaint with the Panel concerning the same criminal proceedings (case no. 2011-22, *Hysni Gashi and Feriz Gashi against EULEX*) and did not ask for anonymity at that time. He thus disclosed his identity in relation to the same facts that are now relevant to his new complaint. In view of these facts, the Panel finds his request for anonymity to be unsubstantiated and decides not to accede to it.

## II. THE FACTS

3. The facts of the case, as submitted by the complainant, and as apparent from documents available to the Panel, may be summarized as follows:

### *Criminal proceedings against the complainant*

4. On 22 April 2006, two persons shot to death another two persons and attempted to kill several others on the terrace of a café in Shtime/Štimlje municipality.
5. On 10 January 2007, an indictment was filed against the complainant by the Public Prosecutor at the District Court of Pristina. The complainant was one of the suspects in that case and he was arrested on that basis.
6. The case was taken over by EULEX Kosovo in December 2008, following a request by the complainant. Some eight (8) court hearings had been held by then and a crime scene visit had also been conducted.
7. On 11 July 2008, the District Court of Pristina issued a ruling as follows:

The detention on remand of the complainant was extended for a further two months, i.e. until 11 September 2008.
8. The main trial commenced in the District Court of Pristina before a panel composed of two EULEX judges and a Kosovo judge on 11 February 2009. A further six (6) court hearings were held thereafter.
9. On 27 March 2009, the complainant was convicted by the District Court of Pristina for aggravated murder, incitement to aggravated murder and other criminal acts.
10. He was sentenced to twenty five (25) years of imprisonment.
11. The complainant's counsel filed a timely appeal against the verdict of the District Court of Pristina on 9 July 2009. It was submitted on his behalf that the verdict contained violations of the Kosovo Criminal Procedure Code, that there was an erroneous and incomplete establishment of the facts of the case, that there was a violation of the Kosovo Criminal Code and that the sentence imposed upon the accused was excessive. Accordingly, it was proposed that the verdict of the District Court of Pristina be annulled and that the case be returned for re-trial.
12. The injured parties, E.F. and G.B. filed separate timely appeals with the Supreme Court of Kosovo, challenging the first-instance court's decision regarding the length of punishment.

13. On 19 April 2011, the appeals filed with the Supreme Court on behalf of the injured parties E.F. and G.B. against the decision on the sentence against the accused complainant were granted. The judgment in relation to the complainant was amended, firstly in relation to the criminal act of aggravated murder, into a term of twenty nine (29) years of imprisonment, and secondly, in relation to the criminal act of unauthorized possession or use of weapons for which he received a term of imprisonment of two (2) years, which consequently resulted in an aggregated sentence of thirty (30) years of imprisonment.

*Previous complaint to the Panel*

14. On 30 June 2011, the complainant, together with Hysni Gashi, lodged a complaint with the Panel.
15. The complaint concerned the same general facts and the same criminal proceedings as those complained of in the present case. However, at the time, the complainants did not inform the Panel about the judgement of the Supreme Court.
16. Both complainants alleged that the criminal proceedings against them had been unfair and that they had been wrongly convicted.
17. On 23 November 2011, the Panel rendered its decision regarding this earlier complaint. It found that the complaint had been lodged outside of the time-limit laid down by its Rules of Procedure and that, in any event, it lacked competence to examine the complaint. The Panel therefore declared the complaint inadmissible (see, [\*Hysni Gashi and Feriz Gashi against EULEX\*](#), no. 2011-22, 23 November 2011).

### **III. COMPLAINTS**

18. The complainant claims that the Presiding Member of the Panel of Judges, a EULEX Judge, acted inappropriately, that the court made an unlawful decision despite all the evidence which pointed to his alleged innocence and that EULEX Kosovo supported and protected criminals in its own interests.
19. Whilst the complainant does not refer to any particular fundamental rights, which he claims was violated, it is apparent from the tenor of his complaint that he must have been referring to Article 6 of the European Convention of Human Rights/Article 14 of the International Covenant on Civil and Political Rights.

### **IV. THE LAW**

20. Before considering the complaint on its merits the Panel has to decide whether to admit the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.

21. The Panel will first refer to the facts and complaints relating to the proceedings before the judgement of the Supreme Court of 19 April 2011. It notes that the Panel has already considered this part of the complaint in the case no. 2011-22 and that it rendered an inadmissibility decision in relation to those. The complainant has not put forth any new information that would warrant a reconsideration of that decision by the Panel. It follows that this part of the complaint is substantially the same as a matter already examined by the Panel and must be declared inadmissible in accordance with Rule 29, paragraph 1(a) of the Panel's Rules of Procedure.
22. As regards the remainder of the complaint, the Panel reiterates that, 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 Kosovo.
23. According to the said Rule, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot review judicial proceedings before the courts of Kosovo. The complaint concerns judicial proceedings conducted by a court in Kosovo. The fact that EULEX judges sit on the bench of a court assigned to examine a case does not detract from the fact that the courts form part of the Kosovo judiciary. The Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts, the legislation applied by them or the decision taken by them. Decisions of the Kosovo courts are subject to appeals and extraordinary legal remedies available under the applicable law (see, inter alia, *Shpresim Uka against EULEX*, 2016-06 & 2017-04, 17 October 2017, par. 22; *Z.A. against EULEX*, 2014-36, 29 February 2016, par. 17; *K.P. against EULEX*, 2014-31, 21 April 2015, par. 13; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, par. 13). It is also noted that, in the present case, the complainant have exhausted the appeal procedures available to them in this case.
24. Consequently, the issues raised in the present complaint do not fall within the ambit of the executive mandate of EULEX Kosovo, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.
25. Furthermore, in accordance with Rule 25 (3) of the Panel's Rules of Procedure, a complaint must be submitted to the Panel within six months from the date of the alleged violation (see, e.g. *Axhemi Zyhdi against EULEX*, 2016-05, 17 October 2017 pars 14-16; *Syla against EULEX*, 2015-10, 1 March 2016, par. 16).
26. The complaint of Feriz Gashi in relation to the decision of the Supreme Court of 19 April 2011 was filed with the Panel on 6 September 2017, long after the six-month deadline had passed. The Panel notes that the conduct complained of by the complainant therefore falls outside of the six month time-limit within which a

complaint must be filed with the Panel according to Rule 25(3) of its Rules of Procedure.

**FOR THESE REASONS, THE PANEL, UNANIMOUSLY,**

*finds* that the part of the complaint relating to the facts preceding the judgement of the Supreme Court of 19 April 2011 is substantially the same as the matter already examined by the Panel, within the meaning of Rule 29, paragraph 1(a) of its Rules of Procedure and the complainant has failed to establish any reason for reconsideration of the decision in accordance with Rule 43(3);

*finds* that the remainder of the complaint is manifestly ill-founded within the meaning of Article 29, paragraph 1(e) of its Rules of Procedure, and that it fails to comply with Article 25(3) of the Rules regarding time-limit for filing of a complaint, and therefore

**DECLARES THE COMPLAINT INADMISSIBLE.**

For the Panel,

John J. RYAN  
Senior Legal Officer

Magda Mierzewska  
Presiding Member