



INADMISSIBILITY DECISION

Date of adoption: 7 April 2014

Case No. 2013-22

Gani Gashi

Against

EULEX

The Human Rights Review Panel sitting on 7 April 2014
with the following members present:

Ms Magda MIERZEWSKA, member
Mr Guénaël 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 2 September 2013.

II. THE FACTS

2. On 14 November 2007, the International Public Prosecutor filed an indictment against the complainant and charged him with war crimes

against the civilian population allegedly committed during the conflict in Kosovo in 1998.

3. On 3 March 2009, the District Court of Pristina, sitting as a mixed panel of Kosovo and international judges, convicted the complainant of murder, attempted murder and two counts of grievous bodily harm. The court sentenced the complainant to seventeen years of imprisonment.
4. On 8 December 2008, the Supreme Court of Kosovo, sitting as a mixed panel of Kosovo and international judges, upheld in part the complainant's appeal and reduced his sentence to fifteen years of imprisonment.
5. On 6 August 2010, the Supreme Court rejected the complainant's challenge for protection of legality as unfounded.

III. COMPLAINTS

6. Invoking the Universal Declaration of Human Rights, the complainant submits that his right to a fair trial was infringed and that he was unjustly convicted.

IV. THE LAW

7. 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 which must be guaranteed by public authorities in all democratic legal systems. These instruments reflect, to a very large extent, the same rights and fundamental values as were earlier laid out in the Universal Declaration of Human Rights upon which the complainant relies.
8. 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.
9. In accordance with Rule 25, paragraph 3, of the Rules of Procedure, complaints must be submitted within six months from the date of the alleged violation.
10. The Panel notes that the complainant's grievance concerns, in essence, the outcome of the criminal proceedings against him. The

final decision in those proceedings was given on 6 August 2010, when the Supreme Court of Kosovo dismissed the complainant's request for protection of legality. He filed his complaint with the Panel on 2 September 2013. However, in accordance with Rule 25, paragraph 3, of the Rules of Procedures the complaint should have been lodged within six months from the decision grounding the alleged violation, on 16 February 2011 at the latest. The complaint does not therefore satisfy the admissibility criteria set out in Rule 29 of the Panel's Rules of Procedure.

11. In any event, according to Rule 25, paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot review judicial proceedings before the courts of Kosovo. It has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Those are within the sole competence of the Kosovo courts. Moreover, the Panel has already found that the fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, inter alia, HRRP cases, *Lazić against EULEX*, no. 2011-24 par 20; *Jovanović*, no. 2011-10, par 33; and *Pajaziti*, no. 2012-05, par 9).
12. As a result, the issue raised in the present complaint does not fall within the executive mandate of EULEX Kosovo. Therefore, the issue does not fall within the ambit of the Panel's competence, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

FOR THESE REASONS,

The Panel, unanimously, holds that the complaint must be rejected in accordance with Rule 29 (c), as it was introduced out of time and holds that it would in any case lack competence to examine the complaint, finds the complaint falls outside of the Panel's 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