



INADMISSIBILITY DECISION

Date of adoption: 4 October 2012

Case No. 2012-02

Gani Zeka

Against

EULEX

The Human Rights Review Panel sitting on 4 October 2012 with the following members present:

Ms. Magda MIERZEWSKA, Presiding Member
Mr. Guénaél METTRAUX, Member
Ms. Katja DOMINIK, Substitute 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 of 9 June 2010,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 1 March 2012. Ms. Micheva-Ruseva is a Panel Member and also a EULEX judge. She gave the first-instance judgment in the case which is the subject of this decision. Therefore, Ms. Micheva-Ruseva cannot participate in the examination

of the present case as a member of the Panel. She has been replaced by Ms. Dominik, the Substitute Member.

II. THE FACTS

Administrative proceedings

1. The complainant and his brothers B.Z. and R.Z. are co-owners of several plots of land in Lipjan/Lipljan municipality. In 2003 the complainant, who lives outside of Kosovo, authorized B.Z to represent him before the Kosovo authorities.
2. On 8 July 2005 R.Z. filed a request with the Department of Planning and Urbanism of the Lipjan/Lipljan municipality for a permit to build a hotel on the brothers' property. The request was granted on 7 August 2005. R.Z. was listed as the sole investor in the permit.
3. On 9 February 2009 the complainant and his other brother, B.Z. contested the permit before the Lipjan/Lipljan municipality authorities, asking to be included as co-investors.
4. The Lipjan/Lipljan municipality granted the request on a number of occasions. However, these decisions were repeatedly quashed by the Ministry of Environment and Spatial Planning. Currently, the administrative proceedings are still pending before the Ministry of Environment and Spatial Planning.

Proceedings before the Municipal Court of Lipjan/Lipljan

5. On 12 March 2009 the complainant and his brother B.Z. filed a claim with the Municipal Court of Lipjan/Lipljan, seeking a declaration that, together with B.Z. they are co-owners of the building constructed on their common property. They also asked for interim measures to be imposed on the defendant.
6. On 28 September 2009 the court issued an interim measure and prohibited R.Z. from alienating, hiding, burdening with a right the building or the land at issue.
7. On 26 November 2009, upon the plaintiffs' appeal, the District Court of Prishtinë/Priština quashed the decision and returned the case for reconsideration to the first instance court.
8. On 21 July 2010 the Municipal Court of Lipjan/Lipljan again issued an interim measure prohibiting R.Z. from alienating, hiding or burdening with a right the property until the end of the court proceedings.
9. On 23 August the appellate court again quashed the decision and returned the case to the municipal court for reconsideration.

10. By virtue of the decision of the President of the Assembly of EULEX Judges of 16 September 2010, the case was assigned to a EULEX judge for consideration.
11. On 1 December 2010 the Municipal Court of Lipjan/Lipljan partly granted the plaintiffs' request for interim measures, forbidding the defendant to alienate, hide or burden with a right the property. The court dismissed their request to forbid the defendant to use the property and to remove security guards from the grounds.
12. On 14 March 2011 the court granted the claim brought by the complainant and B.Z. R.Z. lodged an appeal against the first instance judgment with the District Court of Prishtinë/Priština.
13. On an unspecified later date the complainant asked the President of the Assembly of EULEX Judges (the President) to assign the case to a EULEX panel of judges so as to speed up the proceedings. On 11 July 2011 the President rejected the request. He found that the case did not fulfill the requirements of article 5.1 of the Law of 13 March 2008 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law on Jurisdiction). In particular, there was no grounded suspicion of attempts to influence the impartiality or independence of the local judiciary or suspicion that the local judiciary was not willing or unable to properly deal with the case, or of a serious violation of the fairness of the proceeding. The President further observed that the simple expectation to have the case decided in order determined by the date on which the case was lodged with the court with precedence was not sufficient to justify its assignment to EULEX judges at the appellate level.
14. On an unspecified later date the local judge of the District Court of Prishtinë/Priština asked the President of the Assembly of EULEX Judges to assign the case to a mixed panel. She argued that the court found it particularly difficult to handle the case and that the parties' persistent efforts to make the court examine their case were problematic and a source of concern. The President granted the request on 10 May 2012. He found that to avoid any appearance of bias on the part of the local judiciary and with the aim to reduce tensions among the parties, it was appropriate and in the interest of the administration of justice that the case was assigned to an EULEX judge in the appellate procedure.
15. The proceedings are pending before the District Court of Prishtinë/Priština.

III. COMPLAINTS

16. The complainant submits that the proceedings were unfair and excessively long in violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).
17. He further complains under Article 1 of the Protocol No. 1 to the Convention that he is being denied his right to access and use his property.
18. Moreover, he complains that his case before the District Court of Prishtinë/Priština has not been taken over and examined by a panel of EULEX judges. He invokes Article 7 (a right to be protected by law) of the Universal Declaration for the Human Rights (the Declaration).

IV. THE LAW

19. 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.
20. According to Rule 25, paragraph 1 of the Rules of Procedure the Panel can examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate.
21. 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. Consequently, the Panel cannot influence the outcome of judicial proceedings or the speed with which the pending complaints are examined by the Kosovo courts. The Panel has already found that even the fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court its forms part of the Kosovo judiciary (see among others, HRRP cases nos. 2011-24, *Predrag Lazić*, § 20; 2011-10, *Dejan Jovanović*, § 33.).
22. It follows that the complaints relating to the proceedings pending before the District Court of Prishtinë/Priština fall outside the Panel's mandate. In any event, the Panel observes that the complainant's request has been granted and the case has been taken over by a mixed panel, composed also with EULEX judges.

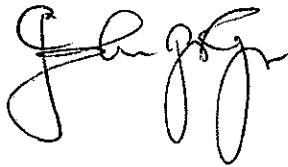
FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, finds the complaint manifestly ill-founded 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



Máгда MIERZEWSKA
Presiding Member

