



INADMISSIBILITY DECISION

Date of adoption: 7 April 2014

Case No. 2013-24

Emin Maxhuni

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 24 October 2013.

II. THE FACTS

2. On 5 February 2008 the complainant submitted to the Kosovo Property Agency (KPA) an ownership claim against N.V. and S.L., relating to two flats located in a building in Prishtinë/Priština.
3. On 26 October 2011, the Kosovo Property Claims Commission (KPCC) decided that the complainant had established his ownership over the property in question and was entitled to its possession. The KPCC ordered the respondents, N.V. and S.L., to vacate the flats within 30 days.
4. The respondents filed an appeal against the decision on 26 January 2012.
5. On 30 October 2012, the Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo, sitting as a mixed panel of Kosovo and international judges, granted the appeal and rejected the complainant's claim of 5 February 2008. The court found that the complainant had failed to prove his ownership rights to the flats in question.
6. The copy of the decision was served on the complainant on 9 September 2013.

APPLICABLE LAW

UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property

as amended by

Law No. 03/L-079 Amending UNMIK regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property

**Chapter II
The Kosovo Property Agency
Section 3
Responsibilities of the Kosovo Property Agency**

3.1 The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:

- (a) Ownership claims with respect to private immovable property, including agricultural and commercial property, and

(b) Claims involving property use rights in respect of private immovable property, including agricultural and commercial property,

Where the claimant is not now able to exercise such property rights.

Chapter III
Organization of the Kosovo Property Agency

Section 4
Organization of the Kosovo Property Agency

The Kosovo Property Agency shall be composed of a Supervisory Board, an Executive Secretariat and a Property Claims Commission (the Commission).

Section 7
Property Claims Commission

7.1 The Commission shall be composed of three (3) members. They shall be appointed by the Assembly upon nomination by the President of the Supreme Court of the Republic of Kosovo. Until the end of international supervision of the implementation of the Comprehensive Proposal for the Kosovo Status Settlement, dated 26 March 2007, two of the three members, including its chairperson, shall be appointed by the International Civilian Representative.

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Chapter IV
The Right of Appeal

Section 12
Appeals

12.1 Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision.

...

12.8 The Supreme Court of Kosovo shall decide on appeals in a panel of three (3) judges to be appointed by the President of the Supreme Court of Kosovo. Until the end of international supervision of the implementation of the Comprehensive Proposal for the Kosovo Status Settlement, dated 26 March 2007, two of the three judges shall be international representatives appointed by the International Civilian Representative.

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Decision on the Appeal

13.1 The Supreme Court of Kosovo as a rule decides on the appeal based on the facts presented to and considered by the Commission.

13.2 The Supreme Court may, where warranted, in the light of evidence properly adduced, make its own determination on facts evaluated by the Commission.

13.3 The Supreme Court shall:

(a) Accept the appeal and make a new decision with any modifications that may be required in the decision of the Commission;

(b) Dismiss the appeal as inadmissible on procedural grounds; or

(c) Reject the appeal as unfounded and confirm the decision of the Commission.

III. COMPLAINTS

7. The complainant submits that his right to a fair and impartial trial has been breached and the judgment of the appellate court was groundless, arbitrary and unfair. He also maintains that his rights to protection of property and to equality before law have been violated.

IV. THE LAW


8. 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.
9. 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.
10. 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.
11. The Panel notes that the complaint is directed at the decision of the appellate court only, not the KPCC. The Panel, therefore, need not decide if it is competent to evaluate the complaints on decisions of the KPCC.
12. 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 review judicial proceedings before the courts of Kosovo. The fact that EULEX judges sit on the bench does not detract from the courts the character as 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).
13. It follows that the complaints do not fall within the ambit of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, as it 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